180.

SUPREME COURT OF THE UNITED STATES.

No. 80.

EMILY POULTNEY ET AL., APPELLANTS,

vs.

THE CITY OF LA FAYETTE, ISAAC T. PRESTON ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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J. & G. S. GIDEON, Printers.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana:

Be it remembered, that on the 15th day of July, 1837, [came] the complainants, Emily Toutant, Widow Poultney, and Matilda Poultney, by their attorney R. H. Chinn, esquire, and filed the following bill in equity, to wit:

To the honorable the Judges of the 9th Circuit Court of the United States for the Eastern District of the State of Louisiana; humbly complaining, shewing unto your honors, your oratrixes, Emily Toutant, Widow Poultney, and Matilda Poultney, citizens of the State of Pennsylvania:

That John Poultney, deceased, in his lifetime was possessed, in his own right, of a good and sufficient title to all that tract or parcel of land situate, lying, and being about one and one-half miles above the city of New Orleans, and on the same side of Mississippi river, and binding thereon ten arpens, and running back as in the deed or authentic act (hereinafter described) is set forth; lying between the now suburb Annunciation and Livaudais, being in the parish of Jefferson, and now called La Fayette, and being all that tract of land which was on or about the 27th day of May, 1818, conveyed by Madam Catiche Millet, Widow Rousseau, to the said John Poultney, a copy of which instrument is hereto annexed, marked A, and prayed to be taken and considered as a part hereof. The said Poultney, by the same instrument of writing, did then mortgage and hypothecate the said tract of land unto the said Madam Catiche Millet, Widow Rousseau, to secure the payment of the sum of eighty thousand dollars, in five annual instalments of sixteen thousand dollars each.

Shortly after the making of the said mortgage, and on or about the 23d day of October, 1819, the said John Poultney departed this life intestate, leaving your oratrix, Emilie F., his widow, and Emily, since deceased, and your oratrix, Matilda, his only children and heirs. Your oratrix, Emilie F., renounced all her interest in the said estate of the said John Poultney, so that the whole thereof descended and passed, by operation of law, unto his said two children. That at the time of the death of the said John, his children were of very tender years, and wholly incapable of attending to their rights. The said Emily departed this life whilst an infant, so that one-fourth of her estate descended to your oratrix Emilie F., and three-fourths thereof to your oratrix Matilda, she having died sole intestate, and without issue. The succession in the estate of said John was readily accepted for and on behalf of his said children, and that of the said Emily, for and by your oratrixes; so that your oratrix Matilda is now entitled to seven-eighths, and your oratrix Emilie F. to one-eighth of the estate hereinbefore described.

The said Catiche Millet, Widow Rousseau, has long since, by executed contracts, parted with all her interest in said estate; she has since departed this life, and her representatives have no interest whatever in the same; but the following named persons and corporation, claiming under her, insist that they are invested with a complete indefeasible title in the same, to wit:

The city of La Fayette, a corporation created by law, and located in this district aforesaid, the corporators being citizens of the State of Louisiana.

Shields, Jean Laiser, Maher, James W. Zacharie, Gay Arnold, f. m. c., Connelly, Thomas Barrett, G. Austin, Isaac T. Preston, H. L. Tilghman, Mrs. Mayo, Maurice Cannon, James McGary, Vanlandingham, Alexander Phillips, Robert Layton, Amanda Nott, Peter Hanson, Turner, Davis, Porter Stone and Company, James Muesman, Richardson, Mariah Jose, f. w. c., Antoine Roubet, Mrs. Wm. Brown, John Laizer, Francisco Cannellas, Oliver Aikin, A. R. Reverand, Peytavin, Carlisle, Pollock, John Rousseau, f. m. c., Richardson, Robert Avart, Widow Drouet, N. C. Lam, Daniel Murphy, George Kline, Guillaume Marmiche, William Stokes, D. T. Walden, John Connelly, H. L. Decleaux, S. Gloyd, and Lawrence, Livaudais, B. C. Elliott, Mrs. Wm. Baldwin, Pollin, f. m. c., James Walsh, Mdm. Jn. Bts. Gotreaux, Mdm. Prinot, James Nicholson, Mdm. Taneslas, George L. Johnson, Isaac L. M'Coy, C Hefferman, J Hefferman, Robert Kay, Dr. Bein, Andrew Thomas, jr., Gottlib Fulmer, Richard Salter, Mrs. S. Schultze, Mrs. M. A. Rapp, Hebesendenger, James Armor, C Ruk, George Reinhardt, Francis B. Conrad. Francis Thomas, Frederick Jacobs, George Bowen, Jacob Kaiser, Mrs. L. R. Kenny, John Nicholson, Charles Carl, C Springer, M Rea, George Kline and wife, John Machler, J Roffignac, George During, Mrs. Maurer, Mrs. Schnider, Henry Lockett, Mrs. M. P. Jones, E N. Alden, J C. Hills, Frederick Proctor, Joseph Hyde, Joseph Gontz, C J. Gow, William Smith, A. L. Forest, Peter, Hillinger, Mrs. Martin Schnider, George Johnson, John Green, John M. Bach, George Bowen, Knettle, Asa D. Gove, John Regan, H R. Lee and Shute, S M. Sickles, Mrs. Heigelberger, Oliver Aikin, W. L. Florance, J C. Wilson and Daniel Girardin, f. m. c., M. Cowell, Turner and Lee, James Canoway, and M Long, P A. Bertrand, Mrs. Isabella Fox, Mrs. Latemore, Mrs. C Rossner, Joseph Terrill, Aspel, Richard M. Carter, J Carter, f. m. c., Lewis Adam, J W. Swain, Benjamin Simmons, Justamond and Maguire, John Mitchell, L F. Bundy, L Ledoux, Mrs. C Tiglor, Purdon, Armstrong, John Richardson, Joseph Hall, John Hall, P Harty and J Lambert, Charles Kufner, John Hinckle, Mrs. Kisler,

Jolly, Mlle. Lazere, f. w. c. Longpré, George De Passau, Brebant, Mdm. Christopher, f. w. c., Albert Depassau, f. m. c., Margaret Lavaud, f. w. c., Wm. Louis Vivant, f. w. c., H. Copman and G W. Clark, E M. Gregory, James Erwin, Henry Dufilho, Robetaille, O P. Jackson, Durmeyer, R Swain, J Trinchard Mdm. Jacobs, Arambide, D T. Walden, Cammack, John Crocker, James Ogilvey, Giles, Babcock and Co., R Watson, Nesbit, Levi Pierce, Peter L. Jore, P L. B. Duplessis, Pilcher, Connelly, Thomas Hobb, Elisha Crocker, Daniel Frederick, James Ruse, Nicholas W. Pendergrast, Laurent Millaudon, Tobias Bickle, William Smith, N Harrington, Chauvin, T G. Chamberlain, John Hall, O Fortier and Co., F. Dugin, John Cohen, M'Henry, Martin Gordon, jr., Eleanor M'Kay, wife of Sam'l M'Kay, Peter Daily and John Daily, minors represented by said Eleanor M'Kay, their tutrix, Sarah Kenney, wife of Laurence R. Kenney, John Coffee and Ann Coffee, minors represented by said Sarah Kenney, William Woodward and George Woodward, minors represented by Henry Buckman, their tutor, Frederica Butler, George W. Butler, and Joseph Butler, minors represented by George H. Sterges, their tutor, Charlotte, wife of William Brooks, Henry Jordy, Edward Jordy, minors represented by Anna Jordy, tutrix, and Frederick Jordy, tutor, Sophia Orr, wife of John D. Orr, and Anna Jordy, Anna Rossner, wife of Charles Rossner, Caroline Enders, Elizabeth Enders, Albert Enders, and John Enders, minors represented by said Anna Rossner, their tutrix, all of whom are citizens of the State of Louisiana, and who are prayed to be made defendants hereto, and who claim in severalty portions of said land, but the particular parts claimed by either is unknown to your oratrixes. David Adams claims lots Nos. 86 to 90 inclusive, in the plan of the city of La Fayette; Samuel Adams also claims five lots in said plan, in square No. 14; and James W. Breedlove also claims square 42 in said plan; all of which is within the claim aforesaid of your oratrixes. The said Adams and Breedlove are also citizens of Louisiana, and prayed to be made defendants hereto. They, as well as the other defendants, claim under the said Widow Rousseau, by executed contracts, and of subsequent date to the title of your oratrixes.

The said estate is of great annual value, yielding an income of at least one hundred thousand dollars per year; and the rents and profits resulting to the defendants, over and above the value of lasting and valuable improvements thereon made by said defendants, equals the sum of one million of dollars. Your oratrixes have been anxious to redeem the said estate from the said mortgage, by paying the mortgaged debt, with interest thereon, and paying for all lasting and valuable improvements made thereon by the defendants, and receiving compensation for the reasonable rents or profits of the estate during the time they have been deprived of the pos-

session thereof, which has been since the year 1819; but the said defendants positively refuse to permit your oratrixes to redeem the said estate; they refuse to permit them to take possession thereof, and refuse to release to them their claim or title to the same, or any part thereof; and they also refuse to account to your oratrixes for the rents and profits of said estate; all of which is contrary to equity and good conscience.

To the end thereof, and for as much as your oratrixes are remediless by the strict rules of law, and can only be relieved in equity, they pray that said defendants may answer on oath the allegations hereof, as fully as if they were repeated in form of interrogatory. May each of them particularly describe such parts or portion of said land as is now claimed by them; and if they have parted with the same, then to whom? May an account be taken of the mortgaged debt and interest, and also of the reasonable rent and profits of the estate; and your oratrixes, by the decrees of your honors, be permitted to redeem the said estate according to the rules and principles of equity, and the defendants be compelled to convey the same estate to your oratrixes. They pray for such other and further relief as is consistent with the principles of equity. They pray the United States writ of spœa., directed, &c., commanding, &c.

R. H. CHINN, *Sol. for Complainants.*

Filed 15th July, 1837.

(Signed) T. W. COLLENS, *Deputy Clerk.*

Document A.

Pardevant Michel de Armas, notaire public à la résidence de la Nouvelle Orléans, Etat de la Louisiane, Etats Unis d'Amérique, et en présence des témoins ci après et soussignés.

Fut présente la Dame Catiche Millet, veuve de feu sieur Pierre George Rousseau, demeurant dans l'Etendue de cette paroisse laquelle, a par ces présentes vendu, cédé et transporté dès maintenant et à toujours avec promesse de garantir de tous troubles, dons, dettes, hypothéques, évictions, aliénations, et autres empêchemens généralement quelconque.

Au sieur John Poultney, négociant demeurant en cette ville à ce présent et acceptant acquéreur pour lui ses héritiers et ayant cause.

Une terre située à environ, une demie lieue au dessus de cette ville et du même bord du fleuve, ayant environ dix arpens de face au fleuve sur toute la profondeur qui peut lui correspondre d'après les titres; la dite terre, fermant sur le derrière, où elle se termine en pointe conformément au plan qu'en a été dressé par le sieur B. Lafon, ingénieur, en date du dix Janvier, mil huit cent six, et attenant, du coté d'en haut, la terre du sieur Livaudais, fils, et du coté d'en bas celle ci-devant appartenante aus Dames Religeuses, et maintenant établie en faubourg, sons le nom de faubourg de l'annonciation, ensemble, la maison, edifices, circonstances et dépendances et généralement tous ce qui se trouve sur la terre présent-

ment vendue, sans en rien excepter ni reserver de la Dame Vendresse, tel que le tout se poursuit et comporte, la dit terre et ses dépendances, étans bien connues du sieur acquéreur qui déclare les avois vues et vesitées à loiser en être contant et satisfait, et n'en pas désirer plus ample description, la Dame Vendresse, déclarant expressément, qu'elle vend la sus-dite terre avec les droits et charges qui y sont attachées telle qu'elle existe et s'étend avec la contenance qui lui correspond, d'après les titres sans aucune garante de mesure, en sorte que le déficit s'il y en a sera à la perte de l'acquéreur, comme l'excédant à son profit.

La Dame Vendresse déclare que la Dame Veuve Panis, sa mère du Chef de laquelle, lui vient la dite terre ayant fait diviser la partie de la dite habitation, qui fait face au chemin, a fait dresser un plan et un prospectus, ce dernier portant la date du vingt-trois Mai, mil huit cent treize, lesquels ont été remis en l'Etude du sieur Pierre Pedesclaux, alors notaire public en cette ville; que dans ce moment le dit notaire Pedesclaux, au sieur Lazare Pignatel, en date du vingt-six Mai, de l'année mil huit cent treize; que la dite dame sa mère, et ensuite la Dame Vendresse, elle même ont vendu de la dite terre les portions et lots dont il sera fait ci-après mention et ce conformément aux dits plan et prospectus, le quel prospectus et littéralement de la tenuer suivante; la Dame Veuve Panis, soussignée offre en vente les terrains de la deventure de son habitation à prendre du chemin selon ce plan ci-annexé et déposé, elle donne et délaisse à chacun des acquéreurs des dits terrains le droit de prendre sur la batture la terre pour les remblais et batisses à faire sur les dits terrains et chemins qui en dépendent, mais sans pouvoir porter la dite terre hors de l'habitation et en faire un commerce, et à la charge de la prendre près du fleuve et dans les endroits ou cela ne peut nuire ni à la levée ni au Cordon, la dite Dame Veuve Panis conservant pour elle et les ayant cause la propriété de la rive du fleuve et la charge des travaux de la levée, jusqu'à ce qu'une nouvelle ou complete division la determine à un abandon formel de la dite propriété de la rive du fleuve ci-exprimée, ce qui et pour lors mettra la levée et tous les travaux en résultant à la charge des propriétaires, suivant et au prorata de leur propriété. Nouvelle Orleans, ce vingt-trois Mai, mil huit cent treize: signé, Veuve Panis. La Dame Vendresse pour suppléer, au plan qui se trouve êgaré comme il est dit plus haut, a fait faire par le sieur Potier, ingénieur, qui avait été chargé de la division en lots ci-dessus menticnnée, et de la dresse du dit plan un nouveau plan d'après les notes qui étaient restées entre les mains du dit sieur Potier, lequel nouveau plan aussi correcte que des notes ont pu permettre de la faire, demeure annexé aux presentes seulement pour constater la division en lots qui a été faite d'une partie de la dite terre après avoir été signé et paraphé, *Ne Varietur*, par les parties, ainsi que par les notaire et témoins soussignés et que mention de cette annexe a été faite sur icelui.

Les portions et lots de terre vendus par la Dame Panis, sont les suivants, savoir, les lots désignés au dit plan, sous les numéros quarante sept, cinquante quatre, et cinquante cinq, au sieur Lazare Pignatel, suivant acte devant le notaire Pierre Pedesclaux, en date du dit jour vingt six Mai, mil huit cent treize; les lots numéros vingt trois, vingt quatre, et trente quatre, ainsi qu'une portion de terre ayant quarante pieds de face sur douze cents pieds, anglais, de profondeur, attenant à l'habitation du sieur Livaudais, au sieur John K. Smith, suivante acte devant le même notaire Pierre Pedesclaux, en date du dit jour vingt six Mai, mil huit cent treize; les lots numéros une, deux, trois, quatre, cinq, six, sept, vingt cinq et trent cinq, au sieur Alexandre Hamilton Smith, suivant autre acte devant le même notaire Pierre Pedesclaux, en date du dix Juillet, mil huit cent treize; les lots numéros dix-huit, dix-neuf, vingt, vingt une, vingt deux, et trente trois, au sieur Patrick Wale, jun., suivant acte devant le même notaire Pierre Pedesclaux, en date du quinze Septembre, mil huit cent treize; et enfin, les lots numéros quarante et soixante seize, et une portion de quarante pieds de large; sur quatre vingt pieds de long bornée d'un coté, par le sieur Livaudais, et de l'autre par la Dame Vendresse, à continuation et attenant la portion, vendue au sieur Smith, le six Mai, mil huit cent treize, et ce au même sieur Smith, suivant autre acte devant le même notaire Pierre Pedesclaux, en date du quinze Juin, mil huit cent quinze.

Les lots vendus par la Dame Vendresse, sont les numéros soixante et dix sept, et soixante et dix huit, au sieur Lazare Pignatel, suivant acte devant Phillippe Pedesclaux, notaire public, en date du vingt huit Février, mil huit cent dix sept, lesquels lot et portions de terre, sont les seules choses qui soient exceptées de la présente vente attendu que la Dame Vendresse, pour le surplus de la dite terre entend subroger comme en effet elle subroge, par les présentes, le sieur acquéreur dans tous les droits noms, raisons actions et prétentions généralement quelconques, qu'elle a et peut avoir comme propriétaire de la dite terre et notamment, dans les droits sur la batture actuellement formée, une partie de laquelle batture actuellement existante s'est accrue et a été renfermée par une levée, depuis la confection du plan en dix huit cent treize, par Mr. Potier, devant la dite terre entre le chemin et la rive marginale du fleuve; ainsi que sur l'augmentation, ou accroissement, qu'elle peut prendre par la suite. Pour par le sieur acquéreur, faire et disposer du tous comme de chose lui appartenante en plein propriété à compter de ce jour, au moyen des présentes, le dit sieur acquéreur se reconnaissant en possession de tout ce qui lui est vendu, par les présente excepté la maison et edifices qui en dépendent ainsi que le jardin près du bois, dont la Dame Vendresse, se réserve la jouissance jusqu'au premier Janvier de l'année prochaine, au plus tard, à la charge par elle, comme elle s'y oblige d'entretenir la levee et le chemin en bon état pendant tout le temps que durera la dite jouissance, laquelle ne comprend pas la sucrerie.

La terre et autres dépendances présentement vendues appartiennent à la Dame Vendresse, pour en avoir hérité de sa mère feue Dame Margueritte Wiltz, veuve en premières noces, de feu sieur Millet son père et en secondes noces, de feu Hyacinthe Panis, la dite Dame Vendresse etant le seul enfant et par conséquent la seule et unique héritière de la mère décédée, ab intestat.

La Dame Veuve Panis, en était propriètaire pour avoir hérité de huit arpens de face de feu sieur Hyacinthe Panis, en vertu du testament de ce dernier en date du vingt quatre Août, mil sept cent quatre vingt six, au rapport de Fernando Rodriguez, alors notaire en cette ville par lequel il a institué la dite Dame Panis sa seule et unique héritière, et pour avoir acquis deux arpens, aussi de face et attenant aux huit précédents de feu sieur Jacques Livaudais suivant acte devant Pierre Pedesclaux, en date du quatorze Septembre, mil sept cent quatre dix sept.

Le sieur Hyacinthe Panis, était propriètaire des huit arpens de terre ci-dessus mentionnés, pour les avoir acquis du sieur Vaugine de Nieurman par acte en date du deux Août, mil sept cent soixante dix neuf, au rapport de Jn. Bts. Garic, alors notaire.

Le sieur Jacques Livaudais, était propriètaire des deux arpens ci-dessus mentionnés, pour les avoir acquis avec une plus grande portion de terre de Dame Veuve Delaronde suivant acte de l'année mil sept cent soixante neuf, au rapport de Jn. Bts. Garic, alors notaire.

Le sieur acquéreur reconnait que la Dame Vendresse lui a présentement remis. 1o. L'expédition de la vente par le sieur Jacques Livaudais, à Dame Veuve Panis, de deux arpens de terre faisant partie de la terre présentement vendue devant Pierre Pedesclaux, le quatorze Septembre, mil sept cent quatre vingt dix sept.— 2o. L'expédition de la vente par le sieur Etienne Vaugine Nieurman, au sieur Hyacinthe Panis, de huit arpens de terre faisant l'autre partie de la terre présentement vendue passé Jn. Bte. Garic, le deux Août, mil sept cent soixante et dix-neuf. 3o. L'expédition de la vente des dits huits arpens de terre par le sieur Augustin Chantalon, et Marguerite Songy, son épouse, au sieur de Vaugine et Dame Pelagie Petit Delivilliers, passé au rapport de Jn. Bte. Garic, le vingt huit Mars, mil sept cent cinquante huit. 4o. L'original de la vente faite le douze Septembre, mil sept cent cinquante trois, par Louis Havier Delino, et Dame Madelaine Broutin, son épouse, à Augustin Chantalon, et Dame Marguerite Songy, son épouse, la dite vente passée sons seing privé, attendu que la sieur Chantalon était alors le seul notaire qu'il y eut à la Louisiane, de six arpens faisant partie des huit ci-dessus mentionnés. 5o. Un plan de la devanture et procés verbal d'arpentage de la terre présentement vendu, faits le vingt quatre Mars, mil huit cent trois, par le sieur Gilbert Guillemard, commissionné ingénieur, par le gouvernement. 6o. Et enfin, un autre plan fait d'après le precédent, et representant le prolongation dans la profondeur de la dite terre jusqu'au point ou elle se ferme fait par le sieur By. Lafon, ingénieur, en date du dix Janvier, dix huit cent six, quant aux autres titres l'acqué-

reur ne pourra en exiger la remise de la Vendresse, qui déclare avoir délivré de bonne foi tous ceux qui étaient en sa posession, mais l'acquéreur, pourra les retirer des mains de qui il appartiendra, ou s'en faire délivrer à ses frais, toutes les expéditions ou extraits.

Cette vente est fait à la charge par l'acquéreur qui s'y oblige de supporter les servitudes passives, apparentes ou occultes dont la terre présentement vendue peut être chargée sauf à l'acquéreur à s'en défendre et à faire valoir à son profit les servitudes actives le tout à ses risques périls et fortunes.

Et en outre pour et moyennent la somme de cent mille piastres à compte de laquelle la Dame Vendresse, reconnait avoir reçu comptant dés avant les présentes et hors la vue du notaire et témoins soussignés, celle de vingt mille piastres, du sieur acquéreur au profit du qu'elle elle en donne bonne et valable quittance et descharge, renonçant quant à ce su bénéfice de la loi, *non numerata pecunia*, et autres et relatives et quant à la somme de quatre vingt mille piastres restantes pour parfaire le prix de la présente vente l'acquéreur promet et s'oblige à la payer et acquitter à la Dame Vendresse, ou ses ayant droit, en cinq paiemens annuels et égaux, de seize mille piastres, chacun dont le premier écherra, sera du, et exigible dans un an, le second dans deux ans, les trosième dans trois ans, le quatrième dans quatre ans et le cinquième et dernier dans cinq ans, à partir de ce jour et pour faciliter à la Dame Vendresse, la disposition de ses créances l'acquéreur lui à tout présentement fourni ainsi qu'elle le reconnait, et en donne décharge, cinq billets, souscrits par lui sieur acquéreur en date de ce jour à l'ordre des sieurs Harrod et Ogdens par qui ils sont endossés chacun de la somme de seize mille piastres, et payables aux époques ci-dessus fixées, lesquels cinq billets ont été signés et paraphés, *ne varietur*, par le notaire soussigné conformément à la loi et à la sureté, de l'exact paiement de tous et chacun des dits billets à leur échéance respective l'acquéreur consent que tout ce qui fait l'objet de la présente vente, ainsi que les augmentations et améliorations qui pourront y être faires, par la suite soient et demeurent spécialement, et par privilége affectés, obligés et hypothèques.

Il est expressément convenu entre les parties, que dans les cas ou le sieur acquéreur ne paierait pas un plusieurs, ou tout les dits billets à leur échéance, et que les endosseurs fussent obligés de la faire qu'alors, ces derniers seront subrogés dans tous les droits noms, raisons, actions, privileges et hypothèques de la Vendresse, pour raison du montant des billets que les dits endosseurs seraient obligés d'acquitter pour défaut de paiement par le tireur, sans qu'il soit besoin d'aucun, autre acte à cet effet. Il est deplus expressément convenu aussi entre les parties, que le sieur acquéreur sur la simple remise, qu'il fera au conservateur des hypothèques en cette ville, de tous et chacun des dits billets, qu'il aura payés et retirés pourra faire rayer la dite hypothèque jusqu'a concurrence du montant des billets par lui ainsi payés, et retirés lesquels billets resteront comme

prices justificatiers entre les mains du dit conservateur, lequel en faisant les dites radiations, sera bien et valablement déchargé.

D'après le certificat du conservateur en cette ville, à la date de ce jour, la propriété présentement vendue n'est sujette à aucune hypothèque inscrite contre la Dame Vendiesse.

C'est ainsi, &c., promettant, obligeant, renonçans, &c.

Dont acte.

Fait et passé à la Nouvelle Orléans, sur l'habitation de la Dame Vendresse, laquelle fait l'objet des présentes le vingt sept Mai, de l'annee mil huit cent dix huit, et la quarante deuxième de l'indépendance Americaine, en présence des sieur John K. West et Richard Harrison, ainsi que les sieurs Laurent Rousseau et Pierre André Rousseau, témoins requis exprés, et domiciles, lesquels ont signé avec les parties et le notaire, après lecture faite.

(Signé) Veuve ROUSSEAU,
P. ROUSSEAU,
JOHN POULTNEY,
JOHN K. WEST,
RICHARD HARRISON,
L. ROUSSEAU,
MICH'L DE ARMAS, *Not. Pub.*

Pour copie conforme à l'original resté déposé en mon étude pour recours. Nouvelle Orléans, ce onze Juillet, mil huit cent trente sept; les mots B. vendus, interlignés bons; les mots sept, tireur sur chargés bons.

MICHAEL DE ARMAS,
Notaire Public.

Filed 15th July, 1837.
(Signed) T. W. COLLENS, *Deputy Clerk.*

And afterwards, to wit, on the 12th June, 1838, the following answer was filed, to wit:

To the honorable the judge of the ninth circuit court of the United States, for the eastern district of the State of Louisiana, sitting in equity jurisdiction:

The several answer of Robert Layton, one of the defendants to the bill of complaint of Emily Toutant, widow Poultney, and Matilda Poultney, exhibited in this court against this defendant, and many other defendants; the said answer to serve and be instead of a demurrer and pleas to the said bill of complaint.

This defendant first denies that the complainants are citizens of the State of Pennsylvania, as alleged by them, and avers that they are citizens of the State of Louisiana.

Wherefore, he prays the judgment of the court, whether it will further take cognizance and jurisdiction of this suit, and that the same may be dismissed with costs.

If, however, this plea in abatement should be overruled, this defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or to so much, and such parts thereof, as this defendant is advised it is material for him to make answer, and says, that this defendant admits, that John Poultney, now deceased, did, in his lifetime, acquire, by virtue of the act of sale referred to in said bill of complaint, dated the twenty-seventh day of May, one thousand eight hundred and eighteen, from Madam Catiche Millett, widow Rousseau, passed before M. D'Armas, notary public, a good and sufficient title to the property mentioned and described in said act of sale, and on the terms therein mentioned.

This defendant further admits, that said Poultney did, in and by said instrument in writing, hypothecate the said tract of land unto the said Catiche Millet, widow Rousseau, to secure the sum of eighty thousand dollars, in five annual instalments of sixteen thousand dollars each; and this defendant refers to said act of hypothecation, as showing that said hypothecation was made to secure that amount, as so much of the purchase money and original price or consideration of said tract of land; but this defendant denies that said tract of land was mortgaged to the said widow Rousseau, in any such sense and meaning as is usually understood and meant by the word "*mortgage*," in common law jurisprudence, viz: denies that a legal right to the property, or right to take possession thereof on non payment, was given by said act of hypothecation to Madam Rousseau; but, under the laws of Louisiana, she only acquired [the right] to have said property seized and sold if the price was not paid. And, therefore, complainants have, as hereafter pleaded, all the remedy at law to which they are entitled.

This defendant admits, that said John Poultney departed this life, on or about the 23d of October, 1819, intestate, and that said Emily Toutant was left his widow, and Emily, since deceased, and Matilda, his only children.

This defendant denies that said widow Poultney ever was an heir of John Poultney, or ever renounced his succession; but this defendant admits, that said Emily Toutant renounced the community of acquests and gains which existed between her and said John Poultney during their marriage.

This defendant denies that the estate of John Poultney *described* and passed by operation of law on his said two children, but, on the contrary, insists that, by virtue of the then laws of Louisiana, as is hereinafter more fully set forth, the estate and succession of John Poultney remained, and was a "vacant succession;" and that before the same was accepted, so as to vest any title thereto in his children, the right and title to the property described in the bill of complaint was, by the effect of certain judicial proceedings, herein-

after fully set forth, divested out of the succession of John Poultney, and vested in persons under whom this defendant claims title.

This defendant further answering; admits, that said Emily Poultney departed this life a minor, and that Emily Toutant, widow Poultney, is the heir of Emily Poultney, for one-fourth part of any estate which she may have died entitled to, and the said Matilda Poultney is heir of the three-fourth parts of any estate said Emily Poultney may have died entitled to; but defendant denies that the oratrix Matilda, and the oratrix Emily, are entitled to any such parts or portions of the estate in the said bill of complaint described, if by the estate, in said bill of complaint described, be meant either the tract of land described in the act of sale annexed to the said bill of complaint, or the succession of John Poultney, such as it stood at the time of his decease.

This defendant does not know, and therefore does not admit, but, on the contrary, denies, that the succession of John Poultney was regularly accepted by and on behalf of his said children, and that the said succession of said Emily Poultney was regularly accepted by and on behalf of his said children, and that the succession of the said Emily Poultney was accepted by said complainants; and this defendant insists, that if said successions were ever accepted as aforesaid, it was done long after the right and title to the tract of land mentioned and described in the bill of complaint was divested out of the succession of said John Poultney, in the manner hereinafter set forth; and, therefore, that said complainants are not in any manner entitled to any part of said tract of land.

And this defendant expressly denies, that he claims under Catiche Millet, except so far as Catiche Millett conveyed her title to said property to said John Poultney, and denies that he claims under her in any such manner, or that the complainants stand in any such relation to this defendant, that they are entitled as against him to redeem.

Defendant does not know that there is any other matter or thing contained in said bill of complaint, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, that is true, to the knowledge or belief of this defendant.

This defendant further answering, says, that the complainants have not set forth, fully and fairly, and according to their knowledge of the same, the facts and matters connected with the ownership and title of John Poultney, to the tract of land described in the act of sale annexed to their bill of complaint, and affecting the title he had thereto, or that his surviving widow and child pretend to claim under him; and this defendant avers, that the knowledge of all the facts and matters affecting said title, is material to his defence, which facts he alleges to be as follows:

That on the twenty-seventh day of May, 1818, John Poultney purchased from Catiche Millet, widow Rousseau, a tract of land of

ten arpens front, with a reservation of certain parts or portions thereof which has been previously sold by said Catiche Millet, and which tract of land includes the lots and parcels of land of which this defendant is now in possession.

This defendant further answering, says, that the price of the purchase of said tract of land was one hundred thousand dollars, ($100,000,) of which sum, Poultney paid down twenty thousand dollars, ($20,000,) and gave his five notes for sixteen thousand dollars, ($16,000,) each payable at one, two, three, four, and five years after date.

That a commercial firm, then existing in the city of New Orleans, under the name of Harrod and Ogden, consisting of Charles Harrod, George M. and Peter V. Ogden, was by the agreement of parties, in the act of sale aforesaid, given as endorsers of said notes and sureties for the payment of the said notes, being the balance of the purchase money.

This defendant further answering, says, that in the spring of 1819, John Poultney became embarrassed in his circumstances, and on the 26th of April, 1819, petitioned the court of the first judicial district of the State of Louisiana for a respite from his creditors, of one, two, and three years, which was granted to him, but the terms of *of* said respite was never complied with by him.

This defendant further says, *this defendant further says*, that in the corrected schedule filed on that occasion by said Poultney, the amount of his credits were put down at the sum of two hundred and thirty-seven thousand nine hundred and twenty-one dollars twenty-one cents, ($237,921 $\frac{21}{100}$) and the amount of his debts at two hundred and seven thousand three hundred and fifty dollars nine cents, ($207,350 $\frac{9}{100}$); but that the debts of said Poultney were much greater, and he was wholly insolvent and unable to pay his debts.

This defendant further avers, that said John Poultney died on the 23d of October, 1819, and that on the [twentieth] of January, 1819, Emily Toutant Beaurgard, widow of said Poultney, and one of the complainants, aided and assisted by John R. Grymes and A. L. Duncan, counsellors at law and counsel of said widow, made a final renunciation of the community of acquests, reserving all her rights on the property of her said husband, which rights she declared she would bring forward when necessary.

Defendant shows that said John R. Grymes and A. L. Duncan, were the particular friends and counsel of the said John Poultney, and were his counsel in obtaining the respite.

This defendant further answering, says, that widow Poultney, by renouncing the community, renounced all claim or right in any property acquired by said John Poultney during the marriage, and thereby admitted that the succession of said Poultney was insolvent.

This defendant further shows, that on the 25th October, 1819, two days after the death of Poultney, the seals were affixed on his effects.

That on the 20th of November, 1819, on the petition of the widow, the seals were taken off from his store and effects, for the purpose of searching for a *will*, after which they were ordered to be affixed again. And this defendant now charges and avers, that said Poultney having departed this life in 1819, under the operation of the civil code of Louisiana, passed in 1808, and other laws then in force, and before the passage of the civil code of Louisiana in 1825; and after said Poultney had obtained a respite, and the terms of said respite not having been complied with, and there having been no acceptance of said succession, and the community of acquests and gains having been renounced by said widow, who was de facto and of right the tutrix of said minors, the said succession of said Poultney was an abandoned and vacant succession. And this defendant further proceeds to show the legal proceedings which were had in relation to said insolvent, abandoned and vacant succession.

Defendant shows, that on the 11th February, 1820, Lloyd & Harrison, John Brandt & Co., and Henry Turner, presented a petition to the said court of the first judicial district, alleging themselves to be creditors of the late John Poultney, that his estate and succession was in insolvent circumstances, and totally insufficient to pay the debts thereof; and that the widow had renounced the community and succession aforesaid, and there was no person legally authorized to administer the same; the petition concluded by praying, that a meeting of the creditors of John Poultney might be called to take into consideration the affairs of the succession, for the purpose of naming syndics to administer the same for the benefit of all concerned, and to do all other acts and things that may be lawful and necessary in the premises.

This petition was signed by A. L. Duncan and John R. Grymes, as counsel for the petitioners.

These allegations being proved to the satisfaction of the court, and being in fact true, the said district court did accordingly, on the 10th day of February, 1820, order a meeting of the creditors of the estate of John Poultney, to be held before H. Lavergne, a notary public, and did order all proceedings against the estate to be stayed, and appointed Nathaniel Morse, esquire, then an attorney of said court, to represent the absent creditors.

That in pursuance of said order of said court, a meeting of the creditors of the estate of said Poultney was accordingly held before said notary, and after due proceedings, and after due and legal notices on the 13th March, 1820, said Lloyd, Foster, and P. V. Ogden, were elected syndics of the succession of said John Poultney.

That on the 4th of April, 1820, a petition was presented by the persons named as syndics, praying that these proceedings might be homologated. That the syndics might be permitted to take possession of the property of the succession, and sell the same, an order of said court was made thereon, homologating the proceedings before the notary, authorizing the syndics to take possession of the property referred to in the petition, and to sell the same as prayed for.

On the 24th April, 1820, the syndics presented a petition to said court for an order of sale of the property. Amongst the property enumerated as subject to sale, is the plantation aforesaid bought of the widow Rousseau.

On the 3d of March, 1820, the syndics presented a petition to the probate court of the city and parish of New Orleans, stating that the widow had renounced the community between her and her deceased husband; that a meeting of the creditors had taken place in pursuance of an order of the district court, that they had been chosen syndics; and praying that the seals of the probate court might be taken from the papers and effects of the deceased, and the same be delivered to petitioners, to be administered according to law.

The said probate court did accordingly order the justice who had affixed the seals to take off the same from the papers and effects of the deceased, as prayed for; and the said syndics took possession of all the property of the succession of John Poultney, deceased, including the land in controversy.

This defendant further answering, shows that, on the ninth of May, 1820, Charles Harrod, George M. Ogden, and Peter V. Ogden, who constituted the firm of Harrod & Ogden, who were endorsers of the notes given by Poultney for the credit part of the purchase money of the Rousseau plantation, and who had paid the first of said notes, presented their petition to the district court, stating the purchase of the plantation by John Poultney from Madam Rousseau; that the property had been specially hypothecated to secure the payment of the notes which had been endorsed by them; and that by the act of sale it was stipulated, that in case they, the endorsers, should be obliged to pay said notes, they should be subrogated to the hypothecation, and to all the rights of the seller. That the first of the said notes had been protested, and paid by them; and the second would become due in a few days, when they would be called upon to pay it. They prayed for an order of seizure, and sale of the property for so much cash as would pay the amount of the two first instalments of sixteen thousand dollars each, and the necessary costs and expenses; and that the payments should be made to coincide with the periods at which the other three notes shall respectively fall due; and that George Lloyd, Peter V. Ogden, and Henry Foster, syndics of the creditors, be cited to answer the petition.

The following order or decree was given, and signed by the judge: "It is ordered, that the mortgaged property in the petition mentioned, or so much thereof as may be sufficient to satisfy the petitioner's demand, be seized, and sold according to law"—May 8th, 1820; and a citation was issued and served on said syndics, on the 9th of May, 1824.

That on the 9th of May, 1820, an order of seizure issued, directed to the sheriff, commanding him to sell the mortgaged property, or so much thereof as would satisfy the plaintiffs' demand of thirty-

two thousand dollars, interests and costs. On the 21st May, 1820, a document was filed, dated the 29th May, 1820, signed by Harrod & Ogden, by G. M. Ogden, and by the syndics, consenting that the property seized should be advertised and sold, subject to the payment of three notes, secured by mortgage, and payable at the following dates, viz: one note, payable the 30th May, 1821, for $16,000; one note, payable the 30th May, 1822, for $16,000; one note, payable the 30th May, 1823, for $16,000; amounting together [to] $48,000. The balance of the purchase money payable in cash without appraisement. On the same day, the judge ordered or decreed a sale, in conformity with this agreement.

By virtue of said order of seizure, the sheriff served the writ, copy of petition, and notice to pay in three days, on Mr. Lloyd, one of the defendants, on the 13th June, 1820; after the fulfilment of all legal formalities, sold the property, according to law to George M. Ogden, pursuant to an order of the court, for $48,000, payable, one-third on the 30th May, 1821; one-third on the 30th May, 1822; and one-third on the 30th May, 1823, being the amounts due to widow Rousseau, and twenty-one thousand dollars in cash—and made his return on the 18th of June, 1823.

On the 10th March, 1823, judgment by default was entered, on the motion of counsel, for plaintiffs; and on the 29th of March, 1823, was confirmed on the first note of sixteen thousand dollars, and judgment rendered for that sum and interest in favor of plaintiffs.

The sheriff's deed bears date the 13th day of June, 1820, and conveys to George M. Ogden all the right, title, interest, or demand, which John Poultney, junr., on the 27th day of May, 1818, or at any time since, had in or to a parcel of land, situated about half a league above the city of New Orleans, on the same side of the river, of about ten arpens front on the river, by all the depth which might belong to it according to the titles of the said land, closing in the rear, where it terminates in a point, conformably to a plan made by B. Lafon, dated the 10th day of January, 1806, for the sum of forty-eight thousand dollars.

Between the commencement of the suit of Harrod & Ogden and its final termination, the following proceedings took place in relation to the administration of the insolvent estate of John Poultney: On the 5th of January, 1821, a petition of certain creditors of said John Poultney was presented to the said district court, praying for a meeting of the creditors of the succession of Poultney to elect a syndic in place of P. V. Ogden, deceased. Said meeting was ordered, and held accordingly, and F. L. Turner was elected syndic.

On the 11th April, 1822, Lloyd presented a petition to said district court, stating that F. L. Turner declined serving as syndic; that Henry Foster was dead, and praying that a meeting of the creditors of John Poultney's estate might be held to elect other syndics. The said court ordered a meeting accordingly, and Lloyd was elected sole syndic of the estate of John Poultney.

This defendant further answering avers, that doubts having arisen whether the aforesaid proceedings in the district court to obtain a sale of said property to satisfy the purchase money had been held before a court of competent jurisdiction, Charles Harrod and the heirs and representatives of George M. and Peter V. Ogden, on the 16th January, 1824, filed a petition in the court of probates for the city and parish of New Orleans, praying for an order of seizure and sale of the property purchased by John Poultney from Madam Rousseau, to pay the amount of the three notes given as part of the price thereof, and which they, as endorsers, had been compelled to take up and pay.

The petition states the death of John Poultney, leaving a widow and two children, (Matilda and Emily,) both minors; that the widow had renounced the community of acquests; that she was the natural tutrix of the minors. They pray that she be cited, as tutrix of the minors, to answer in that capacity; be decreed to pay the sum of forty-eight thousand dollars, and that in the meantime the mortgaged premises, being the plantation mentioned in the act of sale annexed to the bill of complaint, be seized and sold to pay said debt.

Francis B. Ogden, one of the plaintiffs, made oath to the truth of the allegations of the petition, and that the heirs of John Poultney, named in the petition, were justly indebted to the plaintiffs in the sum of forty-eight thousand dollars.

On the 17th of January, 1824, the judge of the court of probates made the following order or decree: "Let the defendant be cited to answer the within petition; and in the meantime let the mortgaged premises be seized and sold by the sheriff, according to law." A citation was accordingly issued to the widow Poultney, as tutrix of her said minor children.

A writ of seizure and sale also issued, in pursuance of the order of the court, against the said property, purchased from Madam Rousseau, and the same was sold by the sheriff according to law, who returned on said writ that he had seized the plantation, describing it particularly, and which was the same described in the bill of complaint; and, after stating the sale of a certain part, divided into lots, to different individuals, declares that on the 23d of February, 1824, having exposed the remainder of the plantation to public sale according to law, on the same day Charles Harrod and F. B. Ogden became the purchasers thereof for the price of twenty-seven thousand dollars, and that he left the proceeds in the hands of the plaintiffs, they having obtained a judgment for forty-eight thousand dollars in this court; and in pursuance thereof the sheriff made a deed of the land in controversy to the said Charles Harrod and Francis B. Ogden, on the 12th day of March, 1824.

And the defendant avers that the first and second sales aforesaid were made in fact, though not in form, to and for the use of Messrs. Harrod and Ogden and the representatives of said firm; and the

second sale was made solely to remove all doubts as to the title of the purchasers.

This defendant further answering shows, that on the 27th of February, 1824, a judgment by default was taken on the above mentioned petition and citation, and on the first of March, 1824, a final judgment for forty-eight thousand dollars, with interest, was rendered against said widow Poultney, as tutrix of her minor children, Matilda and Emily Poultney.

And this defendant further answering shows, that said proceedings took place under the peculiar laws of Louisiana, according to the proceedings designated as proceedings *via* execution, by virtue of which, when a creditor is in possession of a notarial act confessing the debt, and the existing of the indebtedness is sworn to, the judge grants an immediate order of seizure and sale of the property hypothecated to pay the debt due thereon, and the creditor may afterwards proceed to obtain a judgment for any balance which may remain unpaid by the sale.

This defendant further answering avers, that by virtue of said order or decree of seizure and sale, or execution as aforesaid obtained in the probate court, as also by virtue of the like order of seizure and sale previously obtained in the district court, and the sheriff's sales in pursuance thereof, and his deeds to the purchasers, all the right, title, and interest which had ever existed in the said John Poultney, or in his succession, of, in, and to the tract of land mentioned and described in the complainants' bill of complaint, under, according to, and in pursuance of, the laws of Louisiana, were entirely divested out of the said John Poultney, and out of his said succession, so that his heirs and representatives could never afterwards claim any title to said property.

This defendant moreover hereunto annexes copies of all said judicial proceedings and acts of sale, and other acts referred to, and prays that the same may be considered a part of this answer.

And this defendant further answering shows, that said Charles Harrod and Francis B. Ogden, purchasers of said property under the decree, judgment, and execution or order of seizure and sale aforesaid, and with a view to obtain the repayment of the moneys paid by Harrod and Ogden, endorsers as aforesaid on the notes given by John Poultney for the purchase money of said property, did afterwards subdivide said property into lots and squares, and on or about the 19th and 20th of April, 1824, sold the same at public auction, at which last sale this defendant became the purchaser of a part thereof, and various other persons became purchasers of parts, portions, and lots of said Rousseau plantation; and the said lots or portions are the same which are now claimed and held by the co-defendants in this case, and the proceeds of sale of the same did not more than reimburse the amount paid as aforesaid by said Harrod & Ogden, as endorsers as aforesaid, with interest, cost, and expenses; and the said sale took place by auction in the city of New Orleans,

in the most public and notorious manner, and was well known to the complainants, particularly to the widow Poultney, tutrix by nature of her minor children.

And this defendant further answering says, that all said legal proceedings, sheriff's sales, and sales at auction, were well known to and acquiesced in by the said widow Poultney, as tutrix of her minor children, at the time they took place, and that said tutrix joined with said syndics in various acts before a notary public, recognising their appointment and administration of the succession of John Poultney, as will appear by copies of notarial acts to this answer annexed, to make part thereof.

And this defendant further answering shows, that by reason of said property being converted from rural into city property, by being subdivided into lots and squares, and improved, built upon, and inhabited as a city by the defendants and others, great additional value was given to said property, which otherwise it would not have possessed, and that without such additional value conferred on said property by defendants, it never would have been for the interest of complainants to claim to redeem the same on payment of the mortgage money and interest; that so long as said lands were of little value, and nothing was to be gained by it, complainants did not assert any such right; but now that the same has become valuable by the industry and improvements made by defendants, they pretend to have a right to redeem the same; and the said attempt on the part of the complainants is unconscientious and unjust, said property having been sold for its full and fair value, to pay the purchase money and the debts of the succession of said John Poultney, which was wholly insolvent.

And this respondent further answering shews, that it was not until long after all said judicial proceedings and sales, by the effect of which all right and title to said property was divested out of the succession of Poultney, viz: Poultney filed a petition stating that she believed it would be for the interest of her minor children to accept of the succession of their father, with benefit of inventory, and a family meeting was prayed for to deliberate thereon; that on the 15th March, 1833, this family meeting was held, and gave their advice and opinion that it would be for the benefit of the minors to accept of the succession of their father, with benefit of inventory; and their proceedings were homologated and confirmed by the court of probates the same day; and defendants insist, that by said acceptance of the succession of John Poultney the complainants acquired no right in the property aforesaid, the right and title to the same having been long previously divested out of the succession of said John Poultney, and that the effect of said acceptance was only to acquire the succession of Poultney in the condition in which it was at the time of said acceptance, at which time the land now claimed was divested out of the same.

And this defendant, instead of formally demurring to the insufficiencies and vague generalities of the complainant's bill of com-

plaint, or formally pleading the several matters which arise on the above statement of facts to the bill of complaint filed in this case, insists thereon, and claims the benefit thereof, as if he had formally demurred and pleaded to the said bill of complaint, under the following heads:

1st. That said bill of complaint charges that this defendant, and the other defendants, claim under Catiche Millet, widow Rousseau, under what are termed in said bill of complaint *executed contracts;* and insists upon a right by the complainants, as heirs of John Poultney, who have accepted his succession, to redeem as against this and the other defendants, without shewing at what time they accepted the succession, and how or in what manner, or in what particular relation of law or right, act or fact, this defendant and the other defendants are in possession under the said widow Rousseau, or claim under her, so as to entitle complainants to redeem as against this defendant and the other defendants. And this defendant further insists, that there is nothing shewn in said bill of complaint, by reason of which this defendant and the other defendants can be called upon to make any discovery, and that the allegations to that effect are merely colorable and to give jurisdiction to the court.

Whereas this defendant insists, as if he had formally demurred to said bill of complaint, that the complainants were bound to set out and clearly shew by what acts and agreements, contracts, deeds, or conveyances, defendants stand in any such relation to the complainants, that the complainants have against them any right to redeem, or to any discovery; and if they were entitled to redeem, the complainants should have averred how much money the complainants owed, and were bound to pay; and defendants were entitled to have the same specially set forth, and what matters in particular defendants were called upon to discover. And this defendant insists, that for want of such specific averments said bill of complaint is wholly insufficient, vague, and imperfect, and this defendant and the other defendants are not bound to answer the same, or to make any discovery in relation to the matters set forth.

2d. That this defendant further insists, as if he had formally and specially demurred and pleaded to said bill of complaint, that by the nature of the act of hypothecation, as set out and annexed to the complainants' bill of complaint, under the laws peculiar to Louisiana, neither the legal title, nor the possession, nor the right to possession of property so hypothecated, is ever parted with by the person hypothecating the same, or can be recovered or obtained under such hypothecation by the creditor, so as to make it necessary for a debtor hypothecating property to have recourse to a court of equity to get back the legal title to the property hypothecated, upon paying the debt, and in the manner and to the effect as is necessary under mortgages given pursuant to the laws of States in which mortgages are given under the system of common law jurisprudence.

And this defendant insists, that under and after all the judicial proceedings, judgments, sheriff's sales, and titles, hereinbefore set forth, under and by virtue of which, as defendant insists, all the legal right, title, and interest of, in, and to the said above described property which ever existed in John Poultney, or in his succession, was divested out of said John Poultney and his succession; and under the act of hypothecation made in this case, the complainants have not any equity to come into a court of equity to redeem or to apportion the debt among the defendants, purchasers holding under titles leased and resting upon said judicial proceedings, judgments, sheriff's and other sales, until the complainants shall have first fully and completely established their right and title in a court of law, and the nullity of all said judicial proceedings and sales; whereas, in truth and in fact, as this defendant will hereafter shew, under his plea of res-judicata, to which he refers for the necessary facts in the case, the complainants did heretofore institute a suit at law against a purchaser at the auction sale aforesaid, to recover the property described in their bill of complaint, or a part thereof, on the same title as that which they now set up; and after a full, fair, and impartial trial at law, it was decided and maintained, that said judicial proceedings, judgments, and sales were regular and valid, and had the effect of divesting the right and title to the property claimed by the complainants out of said John Poultney, and out of his succession; and that the complainants who were in said action the plaintiffs had not any right or title to recover the property sued for, and which as aforesaid was claimed under the same title as that now set up by complainants, and defended under the same title now set up by defendants.

This defendant therefore insists, that complainants have no color of equity *this defendant therefore insists that complainants have no color of equity* to come before this court, and can only resort to a court of law to assert their rights or title to said property, if any they have; more especially as by the complainants' own bill it is alleged, that defendants insist that they are invested with a complete, indefeasible title in the same property claimed by the complainants, and that the title of the defendants can only be discussed and investigated on the law side of the court.

And this defendant further specially insists, under the facts above set forth, that the persons under whom this defendant claims, as the origin or source of his title, were, and this defendant is, in possession of the property claimed by him, and sued by the complainants, under and by virtue of a title purely legal in its nature and origin; and the nature, force, effect, and validity of which is only cognizable, and to be tried and investigated, in a court of law, and not in a court of equity; and that the complainants have only colorably, and with a view to give jurisdiction to this court, averred generally, that this defendant and the other defendants stand in such relation to the complainants that they have a right to come

into a court of equity to redeem. Whereas this defendant, as alleged in complainants' bill, sets up, in himself and those under whom he claims, a pure, naked, and strictly legal title to said property; and which title is to be decided upon according to the rules of law, and not according to any equities which may exist between a mortgagor and mortgagee, or between the mortgagor and the assignee of a mortgagee.

And this defendant further insists, that said complainants have only made use of the legal principle that a mortgagor, who, upon executing a mortgage at common law, conveys the legal title of the property mortgaged to the mortgagee, has a right to have the legal title conveyed back to him, upon repaying the debt, interest, and costs, (which, though true at common law, is not true according to the rules of law in Louisiana,) as a mere pretence to come in; and to this court no such rights being created by the act of hypothecation set out in complainants' bill, as to make recourse to a court of equity necessary; on the contrary, in truth and in fact, the real question between the complainants and defendants, as whether the legal title to said property was or was not divested out of the succession of John Poultney, and is or is not vested in the defendants by the judicial proceedings aforesaid, which is a question of legal jurisdiction, and to be decided upon on the law side of the court; and the complainants are not under any necessity to apply to a court of equity for that purpose, but have full, perfect, and adequate remedies at law to assert their rights, if any they have; or at all events must assert their legal title in a court of law before they can in any manner claim the interposition of this court.

3d. And this defendant further insists, that he is a bona fide purchaser of the property held by him, being a part of a tract of land claimed and described in the complainants' bill of complaint for a valuable consideration which this defendant has long since fully paid, and without notice of any claim or title in the complainants and those under whom this defendant claims, stand in like situation as by the acts of sale from C. Harrod, and F. B. Ogden and others, to this defendant, which are hereto annexed as part of this answer, and as proof in the case more fully and at large appear.

4th. This defendant further insists, as if he had formally and specially pleaded the same, that, as it appears by said proceedings in said suits, judgments have been rendered against the succession of John Poultney, and against the said widow Poultney, as tutrix of her said minor children, and that, by virtue of the executions issued thereon and sheriff's sales, the title in said property of the succession of John Poultney, and of the children of the said John Poultney, if any they ever had, has been divested out of said succession and out of said children, and sold to and acquired by those under whom this defendant claims.

This defendant insists, that said complainants cannot commence any proceedings to assert in any manner any right to said property,

otherwise than by an action of nullity of said judgments and judicial proceedings and sheriff's sales, or by an action of restitution interregnum, with proper allegations and averments.

5th. And this defendant further insists, that said succession of said John Poultney was a vacant succession, and that more than ten years elapsed between the time the property claimed by the complainants was seized and sold by the judicial proceedings before recited and the institution of this suit, during which time this defendant and those under whom he claims have been in quiet and undisturbed possession thereof in good faith and under a just title; and this defendant pleads the prescription of ten years to this suit, as possessor under a just title and a good faith.

6th. And this defendant further insists, that the complainants did heretofore institute a suit in the court of the first judicial district of the State of Louisiana, against William Cecil, to recover a portion of the same tract of land mentioned and described in the said complainants' bill of complaint, and on the same title as that which they now sue, and in the said suit accordingly, to the practice and proceedings in the court of Louisiana, (of which State the complainants always, previously and then, were residents and citizens,) the complainants had the means of asserting and maintaining, and did assert and maintain, all their rights, legal and equitable, as fully as the complainants can maintain them in this court, whether on the law or equity side thereof, or on both sides thereof; and in said suits defendants did successively call in warranty their several vendors and warrantors, until the said Charles Harrod and Francis B. Ogden were made the final defendants as ultimate warrantors of their vendee; and in said suit said Chas. Harrod and Francis B. Ogden, and the other defendants, did set up, plead, and adduce in evidence, all the said matters and things and judicial proceedings above set forth, as divesting all the right, title, and interest of said succession of John Poultney, of, in, and to the property mentioned and described in the complainants' bill of complaint, and every part thereof; and such proceedings were thereupon had that judgment was given, as well in said district court as in the supreme court of the State of Louisiana, the last and final court of appeals and judicature in said State, for, and in favor of, said defendant, and of said Charles Harrod and Francis B. Ogden, and avouching and maintaining the regularity, correctness, and validity of the proceedings aforesaid, by which the right to all and every part of said property described in the bill of complaint, and the right, title, and interest of said succession of said John Poultney therein, was decided to be divested out of said succession, and was vested in the purchasers thereof; and inasmuch as this defendant and all the other defendants derive their title to the several portions of the tract of land claimed by the complainants, mediately or immediately, from the said Charles Harrod and Francis B. Ogden, this defendant pleads the judgment of said district court, and of the su-

preme court of the State of Louisiana in said case, as res-judicata of the alleged rights of the complainants to the property mentioned and described in the bill of complaint, and every part or parcel thereof, and as a bar *and* to the present suit of the complainants.

And this defendant insists upon said matters, as if he had specially and formally pleaded the same, and prays the judgment of the court, whether this defendant will further be compelled to answer said bill of complaint, and to make any discovery in relation thereto, and that the same be dismissed with costs.

7th. But if this court should otherwise decide, and this defendant be further called upon [to] answer the bill of complaint, then, and not otherwise, this defendant answers and says:

That he insists upon the matters hereinbefore set forth, as a full [and] complete answer to the complainants' bill of complaint, and as showing that complainants have not any right, title, or interest, in the property described in their bill of complaint; and avers that defendant is the real, just, and true owner of the property by him possessed, and which is mentioned and described in the acts of sale annexed to, and made part of this answer.

8th. And this defendant further answering says, that if the complainants should succeed in their suit, he is a bona fide purchaser, with a just title, and without notice of complainants' right; and that he has made great and useful improvements in the property possessed, owned, and claimed by him, viz: in making ditches, fences, gutters, pavements, filling up the ground, paying assessments for public works, as owner of said property, paying taxes, erecting houses, kitchen, stables, and other buildings, to the value of one hundred thousand dollars. And if the said property be decreed to complainants, then this defendant prays that they be decreed to restore to him the value of the useful improvements and expenses aforesaid, viz: the sum of one hundred thousand dollars, before being put into possession of said property; and this defendant avers it to be utterly out of his power to say what are the rents and profits of the part of the property in his possession, claimed by the complainants, and that he is not bound to account for the same.

This defendant further answering, says, that he is owner and possessor of lots number nineteen, twenty, twenty-one, twenty-two, and twenty-three, on the plan of the city of Lafayette; that the same were sold by Madam Panis to Patrick Wale, by act before Peter Pedesclaux, on the 15th September, 1813, and were expressly excepted from sale, in the sale from Madam Rousseau to John Poultney, annexed to complainants' bill of complaint, and no such mortgage as that described in said bill of complaint ever did or could exist upon said lots.

This defendant further alleges, that he purchased part of the property held by him, and claimed by the complainants, from Charles Harrod and Francis B. Ogden, who are residents of the parish of Orleans, and citizens of the State of Louisiana, being squares two and

three, and lots Y and Z, on the plan of the city of Lafayette, by the acts of sale annexed, dated 14th May, 1824, and 14th April, 1827, made before Carlisle Pollock, esquire, notary; and part thereof from Persifor F. Smith, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being squares number six and eight, per said plan, by the act of sale annexed, dated the 12th of June, 1827, and by sheriff's deed dated 22d day of July, 1826; and part thereof from John W. Mayo, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being lots T and W, on the plan of the city of Lafayette, by the act of sale annexed, dated 19th March, and 20th May, 1831; and part thereof from George Burbank, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being in square number twelve, named lot number six, per said plan, by the act of sale annexed, dated the 8th of June, 1831, before Carlisle Pollock, esquire, notary public; and part thereof from Wm. John McCoull, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being in square number twelve, viz; lots Nos. one, two, three, and four, per said plan, by the act of sale annexed, dated 14th May, 1831, before said Pollock; and part thereof from George W. Freeland and Peter Mott, who are residents of the parish of Orleans, and citizens of the State of Louisiana, being in square number eight, viz: lots No. seventy-one and seventy-two, per said plan, by the act of sale annexed, dated the 3d January, 1827; and part thereof from Hart Moses Shiff, executor of P. Wale, for himself and his co-executor, J. B. Heno and Ulick Wale, the heirs, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being square number six, and lots Nos. 19, 20, 21, 22, and 33, per said plan, by the act of sale annexed, date the 30th April, 1827; and part thereof from J. M. Back and W. McCawley, who are residents of the parish of Orleans, and citizens of the State of Louisiana, being square number twelve, viz: lots No. 7, 8, and 9, per said plan, by the act of sale annexed, dated the 13th July, 1835; and part thereof from Eliza Doane, wife of Levy S. Doane, who is a resident of the parish of Orleans, and a citizen of the State of Louisiana, being the undivided half of lots X and V, per said plan, by the act of sale annexed, dated August 3, 1836.

And this defendant prays, that said Charles Harrod, Francis B. Ogden, Persifor F. Smith, John W. Mayo, George Burbank, William John McCoull, George W. Vreeland, Peter Mott, Hart M. Stiff, J. M. Back, Wm. McCawley, and Eliza Doane, be made parties to this suit, and be served with a copy of the bill of complaint, and of this answer, and that the United States writ of subpœna issue, directed, &c., commanding, &c.; so that if this defendant be evicted of the property purchased from said Charles Harrod, Francis B. Ogden, Persifor F. Smith, and others, he may have a decree over against the said Charles Harrod, Francis B. Ogden, Persifor F. Smith, and others, for the value of said property, purchased of such of

them. And if from the limited nature of the jurisdiction of this court, said Charles Harrod, Francis B. Ogden, Persifor F. Smith, John W. Mayo, George Burbank, William John McCoull, George W. Vreeland, Peter Mott, Hart M. Shiff, J. M. Back, W. McCawley, and Eliza Doane, cannot be called in warranty by this defendant, and this defendant cannot have a decree over against them, still this defendant prays as before, and that said service of said bill, answer, and subpœna, be made as a means of notifying the said persons of the pending of this suit, that they may render this defendant any assistance in their power in the defence of this suit, and be bound by the effect of the decree rendered in this case; and if from legal and technical objections of jurisdiction, or other reasons, this cannot be done, this defendant prays, that for the purpose of doing full and ample justice, and protecting this defendant, the said complainants may be compelled so to amend their bill as to make the said Charles Harrod, Francis B. Ogden, Persifor F. Smith, John W. Mayo, George Burbank, Wm. John McCoull, George W. Vreeland, Peter Mott, Hart M. Shiff, J. M. Back, Wm. McCowley, and Eliza Doane, parties thereto, so that, if this defendant be evicted of said property, this defendant may either have a decree over against said Charles Harrod, Francis B. Ogden, Persifor F. Smith, and others, such as accords with law and justice, or that said Charles Harrod, Francis B. Ogden, Persifor F. Smith, and others, may be bound, as regards this defendant, by the effect of this decree.

And defendant prays for relief adapted to the nature of the case, and such as in equity and justice he is entitled to.

(Signed) C. WATTS, *Sol. of Def'ts.*
ISAAC T. PRESTON, *for Def't.*

STATE OF LOUISIANA, *City of New Orleans:*

Robert Layton, one of the defendants, being duly sworn, doth depose and say, that the statements in the foregoing answer are true.

(Signed) ROBERT LAYTON.

Sworn to and subscribed before me this 21st day of May, 1838.
THOS. N. MORGAN, *Associate Judge.*

And afterwards, to wit, on the 20th November, 1837, the following order was made:

Monday, 20th November, 1837. Present, the honorable P. K. Lawrence, judge of the United States for the district of Louisiana.

POULTNEY'S HEIRS,
vs.
THE CITY OF LAFAYETTE, et al.

On motion of Isaac T. Preston, esquire, and Charles M. Conrad, esquire, for Robert Layton and others, and of James McKenney, of counsel for the city of Lafayette, and of John McHenry, of counsel

for Isabella Fox, Martin Gordon, jun'r, in proper persona, and J. C. Clarke, of counsel for O. P. Jackson; and on filing the affidavit of Robert Layton, it is ordered that the plaintiffs shew cause, on Thursday, the 21st day of November, 1837, at 10 o'clock, A. M., why the defendants should not be allowed until the first of next term of this court, to make their appearance and defence in this case, and in the meantime no further proceedings be had in the case.

And afterwards, to wit, on the 21st November, 1837, the following order was made:

Tuesday, 21st November, 1837. The court met, pursuant to adjournment. Present, the honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS,
vs.
THE CITY OF LAFAYETTE, et al.

The rule taken in this case yesterday, and returnable to-day, on behalf of a number of defendants in this case, came up and was argued by Isaac T. Preston, C. M. Conrad, John McHenry, and J. C. Clarke, esquires, on behalf of said defendants, and by R. H. Chinn, esquire, on behalf of complainants. Whereupon, it was ordered by the court, that the defendants, on whose behalf said rule was taken, and who are represented by the attorneys named in said rule, be allowed three months from the first day of this term, to make their appearance and defence in this case; and that, for greater certainty, a list of the defendants not named in said rule, but represented by said attorneys, shall be filed in the said case on or before the 22d instant, by the said attorneys.

And afterwards, to wit, on the 20th of December, 1837, the following order was made, to wit:

Wednesday, 20th December, 1837. The court met, pursuant to adjournment. Present, the honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS,
vs.
THE CITY OF LAFAYETTE, et al.

Having considered the motion heretofore made by complainants' counsel, R. H. Chinn, esquire, for an order of court directing the clerk of this court to place this cause upon the rule docket of the court, so that the complainants may proceed in their cause according to chancery practice, the court now order the motion to be overruled.

And afterwards, to wit, on the 15th day of June, 1838, the following answer was filed, to wit:

Circuit court of the United States, ninth circuit, eastern district of Louisiana.

THE HEIRS OF JOHN POULTNEY
vs.
THE PRESIDENT AND BOARD OF COUNCIL OF THE CITY OF LAFAYETTE, AND OTHERS.

Answer of the President and Board of Council of the city of Lafayette, filed June 15th, 1838.

To the honorable the judges of the ninth circuit court of the United States for the eastern district of the State of Louisiana, sitting in equity.

The several answer of the president and board of council of the city of Lafayette, a corporation duly incorporated by act of the Legislature of the State of Louisiana, one of the defendants to the bill of complaint of Emily Toutant, widow Poultney, exhibited in this court against these defendants—the said answer also to serve and be instead of a demurrer and plea to the said bill of complaint—avers for plea to the jurisdiction of this court, that complainants [are] citizens of Louisiana, and not citizens of Pennsylvania as they pretend. And for further answer and plea, they aver that many of the inhabitants of the city of Lafayette, incorporated under the name aforesaid by the Legislature of the State of Louisiana, are not citizens of the State of Louisiana, and cannot be sued by the complainants in this honorable court: wherefore they deny that this honorable court has jurisdiction of the bill of complaint of the complainants, and pray that the same may be dismissed. And for further answer, if required, they aver that the said bill of complaint is insufficient and imperfect in many particulars, but especially in the following, to wit: First, that it does not state at what time the complainants did (as they aver they did) accept the succession of John Poultney, deceased, nor in what manner or by what acts or operation of law these defendants and the other defendants hold or claim under the widow Rousseau, so as to entitle the complainants to redeem as against these defendants and the other defendants. Second, that it does not state how much money the complainants owe on account of the said mortgage annexed to their bill of complaint. Third, these defendants further insist, that by the complainants' own shewing they have no right to resort to a court of equity for relief, inasmuch as by the nature of a mortgage, such as the one annexed to their bill of complaint, under the laws and practice of the State of Louisiana, where the same was passed, the complainants have ample and sufficient remedy and relief at law; and the right of redemption, in the sense in which those words are used at common law, and as applicable to mortgages given pursuant to the common law, does not, and cannot, exist in the State of Louisiana, and with regard to mortgages passed pur-

suant to the laws of said State. Wherefore these defendants pray that the said bill of complaint be dismissed. These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit of exception to the aforesaid errors and insufficiencies, as well as to all others in the complainants' said bill of complaint contained, further answer thereunto, or to so much and such parts thereof as these defendants are advised it is material for them to make answer unto, say they admit that John Poultney, now deceased, did in his lifetime acquire, by virtue of the act of sale referred to in said bill of complaint, dated the 27th day of May, 1818, from Madam Catiche Millett, widow Rousseau, passed before M. D. Armas, notary public, a good and sufficient title to the property mentioned and described in said act of sale, and on the terms thereon stated. They further admit, that said Poultney did, in and by the said instrument in writing, hypothecate the said tract of land unto the said Catiche Millett, widow Rousseau, to secure the sum of eighty thousand dollars in five annual instalments of sixteen thousand dollars each.

They further admit, that said John Poultney departed this life on or about the 23d day of October, 1819, intestate, and that said Emily Toutant was left his widow, and Emily Poultney, since deceased, and Mathilda Poultney, his only children; but they deny that said widow Poultney ever renounced his succession, (she having no right thereto,) although she did renounce the community of acquests and gains which existed between said Emily Toutant and said John Poultney during their marriage. They further admit, that said Emily Poultney departed this life a minor, and that Emily Toutant, widow Poultney, her mother, is her heir for one-fourth part of any estate which she may have died entitled to, and the said Mathilda Poultney is heir at law for three-fourth parts of any estate said Emily Poultney may have died entitled to; but they deny that said Emily ever did accept, or any one on her behalf did accept, the succession of her said father, until all claim or title of succession in and to the tract of land described in the bill of complaint had been completely divested in the manner hereinafter mentioned. They further deny that they claim under Catiche Millett, except so far as Catiche Millett conveys her title to said property to said John Poultney, and deny that they claim under her in any such manner, or that the complainants stand in any such relation to these defendants, that they are entitled as against them to redeem said land. And defendants do not know that there is any other thing or matter contained in said bill of complaint material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants.

These defendants further answering say, that the complainants have not, in their said bill of complaint, fairly and fully, and according to their knowledge thereof, set forth all the material facts

and circumstances connected with the title of these defendants and their co-defendants to the said tract of land, and affecting any claim which the said John Poultney, his heirs or representatives, may have had thereto; which facts and circumstances these defendants aver to be as follows, to wit: That when John Poultney purchased the tract of land described in the complainants' bill, from Catiche Millett, on the 27th day of May, 1818, he paid only one-fifth of the price thereof, to wit, the sum of twenty thousand dollars in cash; and for the remainder of the purchase money, to wit, eighty thousand dollars, he executed his five promissory notes of sixteen thousand dollars each, to the order of, and endorsed by, the firm of Harrod and Ogden, a commercial firm then established in the city of New Orleans, composed of Charles Harrod, Peter V. and Geo. M. Ogden, which said notes were dated all on the 27th May, 1818, and payable respectively, in one, two, three, four, and five years after date, and the payment thereof was secured by a special hypothecation of the tract of land aforesaid, for which the same were given; which facts appear by the bill of sale annexed to and forming part of the complainants' bill.

Defendants further show, that shortly after the purchase of said land by said Poultney, said Poultney became a bankrupt and totally insolvent; and when the first of said five notes of sixteen thousand dollars each fell due, he was not able, and failed to pay the same, and the aforesaid firm of Harrod & Ogden were compelled, as endorsers, to pay and take it up. Some months after the payment of said note, said Poultney departed this life, leaving his estate notoriously insolvent, and his widow, Emily Poultney, renounced the community which had existed between them; his children did not accept his succession, nor would said acceptance been advantageous to them at the time, or have been recommended by a family meeting, had one been consulted.

There being, therefore, no heirs of said estate, or other person legally authorized to administer the same, and the same being in fact vacant and abandoned, in February, 1819, certain creditors thereof applied to the honorable the district court of the first judicial district of the State of Louisiana, for an order calling a meeting of the creditors of the said estate, to take into consideration the affairs thereof, and to appoint syndics to administer the same for the benefit of all concerned. Said court did accordingly make an order calling a meeting of the creditors of said estate, and in pursuance thereof said meeting was duly held before Hugh Lavergne, a notary public in the city of New Orleans; and at said meeting of the creditors of said estate, certain of the creditors, to wit, Lloyd Foster and Peter V. Ogden, were elected syndics thereof; said proceedings of the creditors were returned into court, and were duly appointed and homologated, and the syndics were duly authorized to take possession of the property belonging to the said estate, and to sell the same. Among the property enumerated as necessary to be sold,

was the plantation purchased by the deceased from Catiche Millet. These defendants further aver, that on the ninth day of May, 1820, (said plantation not having yet been sold,) Charles Harrod, George M. Ogden, and Peter V. Ogden, partners as aforesaid in the commercial firm of Howard & Ogden, presented a petition to the honorable the district court of the first judicial district, setting forth the payment by them of one of the notes given by Poultney, as part of the price of said plantation, and their subrogation to the mortgage by which payment of the same was secured; and prayed that the said plantation be seized and sold to satisfy their claim. An order of seizure and sale was accordingly granted, and in virtue thereof, as well as in pursuance of a consent, rule, or agreement, entered into between said Harrod and Ogden, of the one part, and the aforesaid syndics of the estate of Poultney, on the other part, after the sale of the property aforesaid had been duly advertised, and all other formalities of law had been complied with, the same was duly sold by the sheriff of the parish *the parish* of Orleans, on the 13th day of June, 1820, and was purchased by George M. Ogden for and on account of said firm of Harrod & Ogden, for the sum of sixty-nine thousand dollars, to wit: twenty-one thousand dollars cash, and the remaining forty-eight thousand dollars payable, one-third on the thirtieth of May, eighteen hundred and twenty-one, one-third on the 30th of May, 1822, and one-third on the 30th May, 1823, these periods corresponding with those at which the remaining notes given by Poultney for said plantation would fall due; and in pursuance of said adjudication a deed of sale of said land was made to the purchasers by the sheriff.

These defendants further show, that some time after the said sale by the sheriff, doubts having arisen as to the jurisdiction of the district court, by the order of which the sale had been effected, Charles Harrod, surviving partner of the firm of Harrod & Ogden, and the representatives of George M. Ogden, and Peter V. Ogden, the other members of said firm, (who had in the meantime departed this life,) did, on or about the 10th day of January, 1824, present a petition to the honorable the court of probates in and for the parish and city of New Orleans, praying for an order of seizure and sale of the plantation aforesaid, to pay the three notes last above mentioned of sixteen thousand dollars each, which had fallen due on the 30th May, 1822, and 30th May, 1823, and had been paid to the holders thereof by the said firm of Harrod & Ogden, or the representatives of said firm. Whereupon the court of probates did order said plantation to be seized and sold by the sheriff according to law; a writ of seizure and sale was accordingly issued from said court, whereby the sheriff of the parish of Orleans was commanded to seize and sell said property, and under and by virtue of said order the said tract of land, including that portion now possessed and owned by these defendants for the use of the public, was, after due advertisements and compliance with all the formalities in such case required by

law, exposed for sale, and sold by the sheriff of the parish of Orleans on the 23d day of February, 1824, and was purchased by the aforesaid Charles Harrod, and by Francis B. Ogden, for the sum of twenty-seven thousand dollars, and a deed of sale was accordingly made out by the sheriff and delivered to the said purchasers.

These defendants further show, that both of the sales above mentioned of said land, to wit, that made on the 13th day of June, 1820, to George M. Ogden, and that made on the 23d day of February, 1824, to Charles Harrod and Francis B. Ogden, were in reality to the same persons, and were intended for the benefit of the partners of said firm of Harrod & Ogdens, or their survivors or representatives, and to reimburse them for the sums paid by them for said plantation as endorsers on the notes given by Poultney to the widow Rousseau; and the second sale was only intended as a confirmation of the first, and to remove any doubts as to the validity of the title to the said land.

These defendants hereunto annex, as part of this answer, duly certified transcripts of the records, both in the district court and court of probates, relative to the sale of said land, as well as of the mortuary proceedings had in the succession of John Poultney, and also copies of the deeds of sale made by the sheriff as above mentioned.

These defendants now aver, that by virtue of either *of* both of said sheriffs' sales, made in pursuance of said orders of seizure and sale, first of the district court of the first judicial district, and afterwards of the court of probates in and for the parish and city of New Orleans above mentioned, under whose jurisdiction the said plantation and succession of John Poultney was, and of the deeds of sale made in accordance therewith, all the right, title, [and] interest which had ever existed or been vested in said Poultney, or in his succession, in or to the tract of land described in the complainants' bill, were completely divested, and became vested in the purchasers thereof; and the succession of said Poultney ceased to have right or claim, legal or equitable, in or to the same.

And these defendants further answering show, that said Charles Harrod and Francis B. Ogden, purchasers of said property under the order of seizure and sale last mentioned, did, with a view to reimburse the moneys paid by Harrod & Ogden, as endorsers as aforesaid on the notes given by Poultney for the purchase money of said property, afterwards subdivide said property into town lots and squares, and on or about the 19th or 20th days of April, 1824, sold the same at public auction, at which last sale various persons, the co-defendants, to the number of about two hundred, became purchasers of squares and lots of the said Rousseau plantation, and the said lots or portions are the same which are now claimed and held by the co-defendants in this case; and the proceeds of said sale did not more than reimburse the amount paid as aforesaid, with interest, costs, and expenses; and the said sale took place by auc-

tion in the city of New Orleans in the most public and notorious manner, and was well known to the complainants, particularly to the widow Poultney, the natural tutrix of her minor children.

And these defendants further answering say, that all said legal proceedings, sheriffs' sales, and sales of auction, were all known to, and acquiesced in, by the said widow Poultney at the time they took place; and that said widow Poultney joined with the said syndics in various acts before a notary, recognizing their appointment, as appears by copies of said notarial acts to this answer annexed to make part thereof.

These defendants, for further answer, shew, that in consequence of the division of said land into squares and town lots, and its having been converted from rural into city property, and being built upon, improved, and inhabited as a city by these representatives, respondents and their co-defendants, the same did acquire an immense value, exceeding any value which it would otherwise have possessed. That it is in consequence of such additional value that the complainants now pretend to claim said land; whereas, but for these circumstances, the same would not have been worth more than the price which John Poultney paid for the same, and the interest thereon. That the complainants having for a series of years acquiesced in all these sales, without pretending to have any claim or title on the said property, and without even accepting the succession of said John Poultney, did finally accept the same on the 15th day of March, 1833, for the purpose of merely instituting a suit for the recovery of said land. But your respondents aver, that this attempt to recover the same is unconscientious and unjust; and that said property was fairly sold, and these defendants acquired the same in good faith, and without notice of any claim which the children of said Poultney might have thereto. That the same children were in no manner injured by the sale of said property, as it sold for its full value at the time of the sale, and the proceeds of the sale were applied to the payment of the notes due by the succession of their said father, which still remained insolvent and indebted in large sums of money, which have never been paid.

Your respondents further aver, that during the interval which elapsed between the death of said Poultney, on the 23d of October, 1818, and the acceptance of his succession on the 15th of March, 1833, his succession was a vacant one; that these defendants, and those under whom they hold, during all this period were in peaceable and uninterrupted and public possession of the property now claimed from them by the plaintiffs, in good faith and by virtue of sales, partly direct from said Harrod & Ogden, and partly through sundry mesne conveyances from them; whereby the right of plaintiffs, if any they ever had, in or upon the said property, has been lost. That by the acceptance of the succession of John Poultney by his children, on the 15th day of March, 1833, they only acquired his succession in the state in which it was at the

time of said acceptance, and that before the same was accepted the defendants had acquired a title to the said property by the judicial proceedings and sales aforesaid, and by prescription. And these defendants deny, that by the said acceptance by the children of John Poultney of his succession, they did acquire any right or title to the said tract of land described in the complainants' bill of complaint, or to any portion thereof; but insist, on the contrary, that prior to said acceptance the right thereto had been completely divested out of said succession, and had vested in these defendants, and in the other purchasers of different parts thereof.

These defendants further answering say, that under the facts above recited, which they aver to be true, these defendants are in possession of a title strictly legal in its nature, and the nature, force, validity, and effect of which is only cognizable, and can only be tried in a court of law, and not in a court of equity. That complainants have full, perfect, and adequate remedy at law, and the courts of law are fully competent to grant to them every relief to which they are entitled, if (which the defendants deny) they are entitled to any. That it was solely with a view to give color of jurisdiction to this court, that the complainants have (contrary to the facts of the case) alleged, that these defendants and their co-defendants stand in such relation to the complainants, that the latter have a right to resort to a court of equity to assert a pretended right of redemption as mortgagors.

These defendants further shew, that they are bona fide holders of the property held by them for the use of the public, being parts of the tract of land claimed and described in the complainants' bill of complaint, for a valuable consideration; and without notice of any claim or title in the complainants, and those under whom these defendants claim, stand in a like situation as by the acts of sale from Charles Harrod and Francis B. Ogden and others to the defendants, which are hereto annexed as part of this answer, and as proofs in the case more fully and at large appear.

And these defendants further insist, as if they had formally and specially pleaded the same, that as it appears by said proceedings in said suits, judgments have been rendered against the succession of John Poultney, and against the said widow Poultney, as tutrix of her said children; and that by virtue of the execution issued thereon, and sheriffs' sales, the title in said property of the succession of John Poultney, and of the children of the said John Poultney, if any they ever had, has been divested out of said succession, and out of said children, and sold to and acquired by said George M. Ogden and Charles Harrod, and Francis B. Ogden; and these defendants insist that the said complainants cannot commence any proceedings to assert in any manner any right to said property, otherwise than by an action of nullity of said judgments, and judicial proceedings, and sheriffs' sales, or by an action of restitution in integrum, with proper allegations and averments.

These defendants further insist, that said succession of said Poultney was and remained a vacant succession, and that more than ten years have elapsed between the time when the property claimed by the complainants was alienated and sold by the judicial proceedings before recited and the institution of this suit; during which time these defendants and their co-defendants, and those under whom they claim, have been in quiet and undisturbed possession thereof in good faith, and under just title; and these defendants plead the prescription of ten years to this suit, as possessors under a just title and in good faith.

And these defendants further insist, that the complainants did heretofore institute a suit in the court of the first judicial district of the State of Louisiana, against William Cecil, to recover a portion of the said tract of land mentioned and described in the complainants' bill of complaint, and on the same title as that on which they uow sue, and in the said suit, according to the practice and proceedings of the courts of Louisiana, (of which State the complainants always previously and then were residents and citizens,) the complainants had the means of asserting and maintaining, and did assert and maintain, all their rights, legal and equitable, as fully as the complainants can maintain them in this court, whether on the law or equity side thereof, or on both sides thereof; and in said suit the defendant did successively call in warranty their several vendors' warrantors, until the said Charles Harrod and Francis B. Ogden were made the final defendants as ultimate warrantors of their vendee; and in said suit Harrod and Ogden, and said defendants, did set up, plead, and adduce all the said matters and things, and judicial proceedings above set forth, as divesting all the right, title, and interest of said succession of Poultney of, in, and to the property mentioned and described in the complainants' bill of complaint, and every part thereof, and such proceedings were thereupon had, that judgment was given as well in the said district court as in the supreme court of the State of Louisiana, the last and final court of appeal and judicature in said State, for and in favor of said defendant, and of the said Harrod and Ogden, and avouching and maintaining the regularity, corrections, and validity of the proceedings aforesaid, by which the right to all and every part of said property described in the bill of complaint, and all the right, title, and interest of said succession of said Poultney therein, was decided to be divested out of said succession, and to have vested in the purchasers; and inasmuch as these defendants and the other defendants derive their title to the several portions of the tract of land claimed by the complainants, mediately or immediately, from the said Harrod and Ogdens, these defendants plead the decree of said district court, and of the supreme court of the State of Louisiana, in said case as res judicata, and as legal and equitable bar and estoppel to the present suit. And these defendants insist upon all the aforesaid matters as if they had specially and formally pleaded

the same; and pray the judgment of the court, whether those defendants will further be compelled to answer said bill of complaint, and to make any discovery in relation thereto, and that the same be dismissed with costs.

But if this court should otherwise decide, and these defendants be further called upon to answer the bill of complaint, then and not otherwise, these defendants answer and say, that they insist on the matter herein before set forth, as full and complete answer to the complainants' bill of complaint, and as showing that complainants have not any right, title, or interest in the property described, and that defendants are the real, just and true owners of the property by them possessed for the public use.

And these defendants further answering say, that if the complainants should succeed in their suit, these defendants shew that they are bona fide holders with a just title, and without notice *to* complainants' right, and that they have made great and useful improvements on the property possessed by them, viz: in making ditches, curb, and gutter pavements, filling up the ground, repairing the levees, paying for public works, paving streets, erecting market houses, council chamber, and other buildings on said property, to the value of thirty-five thousand dollars, and if the said property be decreed to complainants, then these defendants pray that they be decreed to restore to them the value of the useful improvements and expenses aforesaid, viz: the sum of thirty-five thousand dollars; and these defendants declare it to be out of their power to say, what are the rents and profits of the part of the property in their possession, claimed by the complainants, and that they are not bound to account for the same.

Wherefore, your respondents respectfully pray, that the matters and things aforesaid being considered, that a decree in their favor against the complainants' demands may be rendered, and for all costs; and that this honorable court would offer all other and further relief adapted to the nature of the case, and such as in justice and equity they are entitled to; as in duty bound they will ever pray.

(Signed) McKINNEY, *for Def'ts.*
C. WATTS.
ISAAC T. PRESTON, *Att'y for Def'ts.*
A. M. CONRAD.

THE STATE OF LOUISIANA, *City of Lafayette:*

Joseph Mensman, president of the board of council of the city of Lafayette, being duly sworn, doth depose and say, that the statements in the foregoing pleas and answer are true, to the best of his knowledge and belief.

(Signed) JOSEPH MENSMAN, *President of the Board of Council of the city of Lafayette.*

Sworn to and subscribed at the city of Lafayette, on this 21st day of May, 1838, before me.

B. C. ELLIOTT,
Judge City Court Lafayette.

And afterwards, to wit, on the twentieth day of November, one thousand eight hundred and thirty-seven, the following exceptions of François Robert Avart to the petition filed against him by Emily Toutant, widow Poultney, and Matilda Poultney, was filed 20th November, 1837.

Circuit Court of the United States for the eastern district of Louisiana.

EMILY TOUTANT, WIDOW POULTNEY, & al.
vs.
ROBERT AVART. } No. 37.

The exceptions of François Robert Avart, of the parish of Jefferson, to the petition filed against him in this honorable court by Emily Toutant, widow Poultney, and Matilda Poultney.

The defendant says, that he claims the right of being tried separately, this not being a case in which he is bound to follow suit with the rest of the defendants. And he further says, that he is not bound to answer the plaintiff's petition, in as much as the property from him claimed is not sufficiently described in said petition to enable him to call in warranty his authors, if necessary, or to demand in reconvention his reasonable expenses on said property, if evicted.

(Signed) E. A. CANON, *of Counsel.*

And on the same day and year above mentioned, the following affidavit of Robert Layton was filed.

United States Circuit Court, eastern district of Louisiana, in equity.

EMILY TOUTANT, WIDOW POULTNEY, and MATILDA POULTNEY,
vs.
THE CITY OF LAFAYETTE, and others, defendants.

Robert Layton, one of the defendants, and chairman of a committee charged to represent other defendants, being duly sworn, doth depose and say, that a bill in equity was filed in this court on the 15th day of July, 1837, against the city of Lafayette and other defendants, by Emily Toutant, widow Poultney, and Matilda Poultney; that the number of defendants named in the bill is upwards of two hundred; that a large number of said defendants have appointed a committee of their number, to employ counsel to conduct their defence; that owing to the epidemic which prevailed in this city and the city of Lafayette this fall, and the absence of many persons, and the recent service of the process upon many of the defendants, it has been impossible for the greater part of the defendants, until within a short time past, to take the steps which they deemed necessary to their defence; that it was only on the 15th of

this present month of November, that the committee charged to procure counsel were able to make a final arrangement with the counsel selected; that deponent has been informed by the counsel, and believes it has been wholly out of their power, with a due regard to the rights of their clients, to ascertain the facts necessary for their information, to decide upon the nature and mode of defence they will deem best for the interest of their clients, in time to make their defence at the present term of this court; that deponent is informed by said counsel, that there is some uncertainty as to the proper mode of proceeding in equity in this court, on account of recent decisions on the subject; and on account of the great importance of the matters to be tried, an extension of the time for the appearance of the defendants is essentially necessary to their proper defence and to obtain the ends of justice; deponent further says, that this affidavit is not made merely for delay, but solely to obtain justice.

(Signed) ROBERT LAYTON.

Sworn to and subscribed before me, this 20th November, 1837.

(Signed) T. W. COLLINS, *Deputy Clerk.*

And afterwards, to wit, in June, in the year of our Lord one thousand eight hundred and thirty-eight, the following entry was made upon the chancery rule docket of this court, to wit:

Bill taken for confessed against B. C. Elliott, Alexander Phillips, M. Gordon, jr., the city of Lafayette, John Nicholson, Daniel Frederick, James Nicholson, D. F. Walden, Andrew Thomas, G. Ruk, L. R. Kenney, George Rembardt Pytavin, M. A. Rapp, Madam Briot, Turner, Peter Hanson, and all other defendants who have been served with process more than three months prior to this time in person.

And afterwards, to wit, on the 24th May, 1839, the following rule was taken upon the complainants and entered of record, to wit:

FRIDAY, *May 24th*, 1839.

The court met, pursuant to adjournment. Present, honorable John McKinley, presiding judge; the honorable P. K. Lawrence, district judge.

HEIRS OF POULTNEY,
vs.
PRESIDENT AND COUNCIL OF THE CITY OF LAFAYETTE, et als. } No. 37.

The defendants in this case having pleaded to the jurisdiction, and denied that plaintiffs have capacity to sue in this court; on motion of I. T. Preston and C. M. Conrad, for the defendants, ordered that R. H. Chinn, esquire, solicitor of the plaintiffs, show cause on Monday, the 27th day of May, instant, at nine o'clock,

A. M., why the capacity of the plaintiffs to sue should not be tried on the law side of the court before a jury, upon the issue whether, at the time of the institution of the said suit, plaintiffs were or not citizens of the State of Pennsylvania, or any other State than of the State of Louisiana.

And afterwards, to wit, on the 25th May, 1839, the following rule was entered of record, to wit:

SATURDAY, *May 25th*, 1839.

The court met, pursuant to adjournment. Present, the honorable John McKinley, presiding judge; the honorable P. K. Lawrence, district judge.

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE, et als. } No. 37.

On motion of R. H. Chinn, esquire, the complainants' solicitor, and it appearing to the court, (the district judge absent, having declined to sit in this case,) that service of subpœna has been duly made on the following persons: Aspel, Aranbide, Thomas Barrett, Dr. Bien, John M. Bach, John Connelly, Thomas Connelly, Charles Carl, H. L. Deblieum, Albert Depasseau, Henry Dufalho, P. L. B. Duplesses, James Erwin, Daniel Frederick, S. Gloyd, Madam Gabriana, Joseph Gontz, C. J. Gow, John Green, Asa D. Gove, M. Gordon, jr., C. J. Hills, Peter Hellinger, Mrs. Heigelberger, P. Hardby, Jno. Hall, Thomas Hamb, N. Herrington, Marie Jose, G. L. Johnson, Jolly, O. P. Jackson, Geo. Kilne, Mrs. L. R. Kenney, Knettle, John Laizer, Lawrence, Henry Lockett, J. Lambert, Maher Guillaum Marmiche, John Muchler, Mrs. Mawrer, John Mitchell, L. Millaudon McHenry, Nisbet, Sophia Orr, I. T. Preston, Pollin, f. m. c., Madam Prinot, Frederick Proctor, Antoine Roubet, John Rousseau, M. A. Rapp, M. Ral, Mrs. C. Rossner, Robetaille, Wm. Stokes, Mrs. Schnider, Mrs. Martin Schroeder, Shute, Mrs. Smith, H. L. Tilghman, Turner, Madam Tainsley, Francis Thomas, Joseph Tirrell, J. Trinchard, J. W. Zacharie; and the legal delay has elapsed—ordered, that the bill of complainants be taken pro confesso against the said defendants.

And on the same day and year above mentioned, the following rule:

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE, et als. } No. 37.

On motion of R. H. Chinn, esquire, complainants' counsel, it is ordered by the court (the district judge having declined to sit in this case) that this cause be taken from the issue docket, and remanded to the rule docket.

And afterwards, to wit, on the 27th May, 1839:

MONDAY, *May 27th*, 1839.

The court met, pursuant to adjournment. Present, the honorable John McKinley, presiding judge; the honorable P. K. Lawrence, district judge, absent.

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE, et als. } No. 37.

On motion of I. T. Preston, esquire, the rule taken in this case on Friday, the 24th inst., and returnable this day, was continued until to-morrow, at ½ past nine o'clock, A. M.

And afterwards, to wit, on the 28th day of May, 1839:

TUESDAY, *May 28th*, 1839.

The court met, pursuant to adjournment. Present, honorable John McKinley, presiding judge; the honorable P. K. Lawrence, district judge, absent.

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE. } No. 37.

On motion of I. T. Preston, esquire, of counsel for Geo. L. Johnson, O. P. Jackson, Geo. Kline, Jean Laizer, Henry Lockett, John Muhler, John P. Nisbett, Francis Thomas, Joseph Terrell, defendants in this case, it is ordered by the court, that the order of this court, taking the said bill pro confesso as against these defendants, be set aside, and that they have leave to file an answer, reserving to the complainants the benefit of all exceptions to be taken to said answers.

And on the same day and year, the following answer was filed by I. T. Preston.

Circuit Court United States, ninth circuit, eastern district of Louisiana.

HEIRS OF JOHN POULTNEY,
vs.
THE CITY OF LAFAYETTE, et als. } No. 37.

To the honorable the judges of the ninth Circuit Court of the United States for the eastern district of Louisiana, sitting in equity jurisdiction.

The several answer of Isaac T. Preston, defendant to the bill of complaint of Emily Toutant, widow Poultney, and Matilda Poultney, exhibited in this suit, against this defendant and many other defendants—the said answer also to serve, and be instead of a demurrer and pleas to said bill. This defendant, now and all times hereafter, saving and reserving to himself all manner of benefit and

advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or to so much or such parcels thereof as this defendant is advised it is material for him to make answer, answers and says, that this defendant, for special matter of plea and defence, says, that the plaintiffs are not citizens of Pennsylvania as they allege. This defendant further answers, and adopts the several matters of plea, defence, and answer pleaded, set up and answered by Robert Layton, a defendant, in his answer to the said bill of complaint; and if this defendant be compelled to answer and make discovery, and not otherwise, answers and says, that he is in possession of, and claims title to the portion of the tract of land which is mentioned and described in an act of sale from William Jones and wife, passed before H. B. Cenas, esquire, notary public, on the 14th day of May, 1830, and the undivided half of a lot near the head of Jackson street, fronting on the river.

And this defendant further answering says, that if the complainants should succeed in their suit, this defendant shows that he is a bona fide purchaser, with a just title, and without notice of complainants' title, and that he had made great and useful improvements on the property so possessed, in making ditches, fences, curb and gutter pavements, filling up the ground, paying taxes and assessments, and erecting houses, kitchens, stables, and other buildings, to the value of dollars; and if the said property be decreed to complainants, *and* this defendant prays that they may be decreed to restore to him, before putting him into possession of the same, the value of the useful improvements, viz: the sum of dollars aforesaid.

And this defendant further answering says, that this defendant purchased the property held by him and claimed by the complainants, from William Jones and wife, who is a resident of the parish of Jefferson, and a citizen of the State of Louisiana; and this defendant prays that the said William Jones and wife be made a party to this suit, and be served with a copy of the bill of complaint and this answer; and that the United States' writ of subpœna issue, directed, &c., commanding, &c., so that if this defendant be evicted of the property purchased from said William Jones and wife, he may have a decree over against the said William Jones and wife for the value of the said property, and dollars damages; and if, from the limited nature of the jurisdiction of this court, said William Jones and wife cannot be called in warranty by this defendant, and this defendant cannot have a decree over against him, still this defendant prays as before, and that said service of said bill, answer, and subpœna be made as a means of notifying said person of the pendency of this suit, that he may render this defendant any assistance in his power in the defence of this suit, and be bound by the effects of the decree rendered in this case; and if, from legal and technical objections of jurisdiction, or other reasons, this cannot

be done, this defendant prays that, for the purpose of doing full and ample justice, and protecting this defendant, the said complainants may be compelled [so] to amend their bill as to make the said William Jones and wife a party thereto, so that if this defendant be evicted of his said property, this defendant may either have a decree over against the said William Jones and wife, such [as] accords with law and justice; or that the said William Jones and wife may be bound, as regards this defendant, by the effect of this decree. And defendant prays for relief adapted to the nature of the case, and such as in equity and justice he is entitled to.

(Signed) I. T. PRESTON.

STATE OF LOUISIANA, *city of New Orleans:*

being duly sworn, doth depose and say, that he has heard read the above answer, and knows the contents thereof, and that the same is true.

(Signed) ISAAC T. PRESTON.

Subscribed and sworn to this 27th day of May, 1839, before me.
DUNCAN N. HENNEN.

And on the same day and year aforesaid, the following answer of John Mitchell was filed:

HEIRS OF POULTNEY
vs. } No. 37.
THE CITY OF LAFAYETTE et als.

To the honorable the judges of the ninth Circuit Court of the United States for the eastern district of Louisiana, sitting in equity jurisdiction:

The several answer of John Mitchell, defendant, to the bill of complaint of Emily Toutant, widow Poultney, and Matilda *Matilda* Poultney, exhibited in this court against this defendant, and many other defendants—the said answer also to serve and be instead of a demurrer and pleas to said bill. This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, thereto, or to so much or such parts thereof as this defendant is advised it is material for him to make answer, and says that this defendant, for special matter of plea and defence says, that he denies that the complainants are citizens of the State of Pennsylvania, as they pretend, or were at the time of the institution of this suit. This defendant further answers, and adopts the several matters of plea, defence, and answer pleaded, set up, and answered by Robert Layton, a defendant, in his answer to the said bill of complaint; and if this defendant be compelled to answer and make discovery, and not otherwise, answers and says that he is in possession of, and

claims title to, the portion of the tract of land which is mentioned and described in an act of sale from Sheldon, passed before Charles Pollock, esquire, notary public, on the day of , 18 , being the corner of Jackson and Poplar streets, 60 by 120 feet in size.

(Signed) ISAAC T. PRESTON,
C. WATTS, *Attorneys.*

STATE OF LOUISIANA, *city of New Orleans:*

being duly sworn, doth depose and say, that he has heard read the above answer, and knows the contents thereof, and that the same is true.

(Signed) JOHN MITCHELL.

Subscribed and sworn to this 29th day of May, 1838, before me.
(Signed) DUNCAN N. HENNEN, *Clerk.*

And afterwards, to wit, on Saturday, the first day of June, one thousand eight hundred and thirty-nine, the following order of court was entered of record, to wit:

SATURDAY, 1*st June*, 1839.

The court met, pursuant to adjournment. Present Hon. John McKinley, presiding judge; Hon. P. K. Lawrence, district judge, absent.

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE et als. } No. 37.—In chancery.

The rule heretofore taken in this case on the complainants, to show cause why the capacity of the complainants to sue should not be tried on the law side of court before a jury, upon the issue whether, at the time of the institutions of said complainants, [they] were or not citizens of the State of Pennsylvania, or of any other State than of the State of Louisiana, came on to-day for hearing, by consent of parties; I. T. Preston, C. M. Conrad, and Charles Watts, esquires, appearing for defendants, and R. H. Chinn, for complainants; whereupon, after hearing the arguments of counsel, (the district judge not sitting in this case,) it was ordered by the court that the motion be overruled.

And on the same day and year aforesaid:

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE et als. } No. 37.—In chancery.

This cause coming on this day to be heard before the court, the district judge not sitting in this cause, upon the bill taken for confessed as to the defendants, Aspel, Arambide, Thomas Barrett, Dr. Bien, John M. Bach, John Connolly, Thomas Connolly,

Charles Carl, Albert Depassan, Henry Dufilho, P. L. B. Duplissis, Daniel Frederick, L. Gloyd, Madam Grotriam, Joseph Gontz, C. J. Gow, Asa D. Gove, C. J. Hills, Peter Hellinger, P. Harby, John Hall, Thomas Hand, N. Harrington, Marie Jose, Jolly, Mrs. L. K. Kenney, Knettle, Lawrence, J. Lambert, Maher Guillaum Marmiche, Mrs. Mamer, John Mitchell, L. Millaudon, Sophie Orr, Pollin, t. m. c., Madam Prinot, Frederick Proctor, Antoine Roubert, John Rousseau, M. A. Rapp, M. Ral, Mrs. C. Rossner, Robetaille, William Stokes, Mrs. Schnider, Shute, Mrs. Smith, H. L. Tilghman, Turner, Mde. Janislas, J. Trinchard, and James W. Zachary, it is now decreed and ordered, that, unless the defendants, on or before the first day of next term of this court, show cause to the contrary, the claimants be permitted to redeem the estate, in their bill described, from the mortgaged debt thereon mentioned; and to this end, an account will be ordered to be taken of the amount of the said mortgage debt, with interest, and also of the rents and profits of the estate, held by the defendants respectively, so as to enable the court to pronounce a final decree in the cause; and the said defendants will be decreed to reconvey the property to the complainants, and surrender possession thereof, upon the payment to them of their respective portions of the mortgage debt and interest, after deducting therefrom the reasonable rents.

And afterwards, to wit, on the fifth day of June, 1839:

To the honorable the judges of the ninth Circuit Court of the United States, for the eastern district of the State of Louisiana:

POULTNEY, heirs of,
vs.
THE CITY OF LAFAYETTE et als. } No. 37.—In chancery sitting.

Your oratrixes, Emily Toutant Poultney and Matilda Poultney, by way of amendment to their bill herein, against the city of Lafayette and others, respectfully represent, that they are informed, and verily believe, that F. R. Bonney pretends some claim to lot No. 58, on the plan of said city; and D. Davies claims lot No. 36, all within the boundary of the claim of your oratrixes; that F. W. Schmidt, Frederick Furst, and Frederick Fry, syndic of the creditors of Edward Salzman, also claim portions or parcels of the land embraced in your oratrixes' claim, but what parts or portions is unknown to them.

To the end, &c., they pray that said Bonney, Davies, Schmidt, Furst, and Fry, who are citizens of the State of Louisiana, may be made defendants herein, and compelled to answer the allegations hereof, on oath, as well as those of the original bill.

And that, upon the hearing of the cause, there may be such relief afforded your oratrixes, as in the said original bill is prayed for, they pray for the United States writ of subpœna.

And they will ever pray, &c.

(Signed) CHINN, *for Complainants.*

And afterwards, to wit, on the sixteenth day of December, one thousand eight hundred and twenty-nine, the following order of court was entered of record, to wit:

MONDAY, *December* 16, 1839.

The court met, pursuant to adjournment from the last term.

Present, honorable P. K. Lawrence, district judge; the honorable John McKinley, presiding judge, absent.

POULTNEY'S HEIRS
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

On motion of C. Watts, esquire, ordered, that the rule and notice herein given to the plaintiffs, to give further security for cost, be extended to Thursday next, at 10 A. M.

And afterwards, to wit, on the 19th day of December, 1839, the following order of court was entered of record, to wit:

THURSDAY, *December* 19, 1839.

The court met, pursuant to adjournment. Present, honorable P. K. Lawrence, district judge; honorable John McKinley, presiding judge, absent.

HEIRS OF POULTNEY
vs.
CITY OF LAFAYETTE et als. } No. 37.

The rule and notices in this case were continued until Saturday next, by consent.

And afterwards, to wit, on the 21st day of December, 1839, the following order of court was entered of record, to wit:

SATURDAY, *December* 21, 1839.

The court met, pursuant to adjournment. Present, the honorable John McKinley, presiding judge; honorable P. K. Lawrence, district judge.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

The motions made in this case were this day resumed, and the court (the district judge not sitting) proceeded to hear argument thereon; whereupon, it was considered by the court, that the motions be granted; and it is further decreed, that the complainants do give further security for costs; and thereupon, the counsel of complainant, R. H. Chinn, esquire, offered himself as surety, which was accepted by the court. And the court having heard arguments of counsel, on the application of certain defendants named in the decree Nisi, entered on the 1st of June, 1839, why the same should not be opened, and they be permitted to file an answer, took the same under advisement.

And afterwards, to wit, on the 24th December, 1839, the following order of court was entered of record, to wit:

TUESDAY, *December 24th*, 1839.

The court met, pursuant to adjournment.

Present, honorable John McKinley, presiding judge; honorable P. K. Lawrence, district judge.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

The court having maturely considered the motion of the defendants, against whom a decree Nisi was obtained by complainants on the first day of June, one thousand eight hundred and thirty-nine, now order that the said decree be set aside, and that they be permitted to file their answers, and that the complainants be permitted to file any exceptions thereto.

And on the same day and year aforesaid, the following entry was made upon the chancery rule docket of this court, to wit:

December 24th, 1839.

The following answers are filed to-day—nunc pro tunc for their respective dates, viz:

POULTNEY'S HEIRS
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The answer of Robert Avart was filed on the 20th November, 1837—nunc pro tunc. The answer of O. P. Jackson was filed on the 19th May, 1838—nunc pro tunc. The answer of Robert Layton was filed on the 12th June, 1838. The answers of Gerard Austin, and the president and board of council of the city of Lafayette, *was* filed on the 15th June, 1838. The answer of John Richardson was filed on the 19th June, 1838. The answers of George and Elizabeth Kilne, M'me Pierre Broneau, Eleanor McKay and others, Gasper Kuck, Charles Kaefner, Barney Coffey, George Depassau, Peter Hanson, George Reinhart, Jean Laiser, Jacob Kaiser, John H. Sturges, tutor of the minors, Frederick Butler, G. W. Butler, and Joseph Butler, Antoine Chauvin, Solomma Schulze, George J. Johnson, M'me Stanislaus Le Blanc, Françoise Dugué, jun., and Omier Fortier, James Walsh, Mary D. Kay, Charles Hefferman, Francisco Canella, heirs of Jordy, Joseph Hyde, Charles Komer, Mrs. M. P. Jones, Joseph Terrill, Andrew Thomas, jun., Francis Thomas, Barbara Habersnutinger, were filed on the 16th July, 1838. The answer of O. E. D. Livaudias was filed on the 16th October, 1838. The answers of Polixene François Peytavin, Alexander Phillips, Celeste Euphemie La Branche, wife of William Brown, of Grey Arnold, f. m. c., M'me Verritt, were filed on the

25th day of October, 1838. The answers of Benjamin C. Elliot, Joseph Musman, John Moacklard, James Hefferman, Benjamin Simons, James McGarey, Andrew Thomas, sen., Henry Buckman, tutor of the minors William and George Woodman, and Marie Jose Pierre, f. w. c., were filed on the 27th day of October, 1838. The answers of Ann Mayo, Jas. Rees, Carlisle Pollock, James Pardon, O. C. Vanlandingham, George Bower, Frederick Jacob, John Nicholson, William Kesler, Henry Kopman, David Adams, Giles Babcock, James Armor, M'me Cartoline Tigler, Marie Joseph Pierre, J. Ruffigner, D. Gerardine, and W. Smith, J. W. Justamand, Mary D. Kay, John Henkle, H. R. Lee, James W. Breedlove, Louis Adams, M'me S. Le Blanc, Isabella Fox, Mrs. Joseph D. Baldwin, James Nicholson, G. W. Clarke, Richard Swain, John Longpie, F. B. Conrad, Gottlib Fulmer, Nathaniel C. Lane, Daniel T. Walden, Margaret Lavaud, f. w. c., James Ogilvie, were filed on the 19th day of November, 1838. The answers of O. C. Vanlaningham, George Durmeyer, Peter L. Jose, Frederick Jordy, were filed on the 23d day of November, 1838. The answer of John P. Nesbit was filed on the 27th May, 1839. The answers of R. Salter, John Mitchell, and I. T. Preston, were filed on the 28th day of May, 1839. The answer of Francis Daubert was filed on the 15th November, 1839. The answers of James McKinney and Mortimer Turner were filed on the 16th December, 1839. The answer of William Cooper was filed on the 17th day of December, 1839. The answer of John McHenry was filed on the 18th day of December, 1839. The answers of David Adams, Joseph Gontz, Shiliber Bernard, Joseph C. Hills and al., Adam Graiser, J. B. Gautrien, Philip Harty, Frances Hazelberger, widow of Theodore Ruff, and tutrix of the minor Caroline Ruff, Richard Stokes, Albert D. Passan, f. m. c., Anna Rossner and husband, tutrix of the minor Enders, Guilluame Marmick, Mary Wolfe, widow of Peter Jacobi, James Aspil, Elisha Crocker, Elliott W. Gregory, Marie Christopher, f. w. c., Spence Gloyd, Michael Maher, N. Harrington, jr., Lucelle Vivant, f. w. c., and John M. Bach, were filed on the 30th December, 1839. The answers of Mary Adale Harty, widow Lambert, A. Thomas, jr., and James Calloway, were filed on the 31st December, 1839. The answers of True Gilbert Chamberlain, Abner Phelps, Mathew Rae, and Frederick Proctor's demurrer, were filed on the 16th January, 1840. The answers of Lewis F. Bundy and J. E. Jolly were filed on the 17th and 28th of January, 1840. The answer of J. Slidell was filed the 19th February, 1840.

And afterwards, to wit, on the 4th January, 1840, the following order of court was entered of record, to wit:

SATURDAY, *January 4th*, 1840.

The court met, pursuant to adjournment.

Present, honorable John McKinley, presiding judge; honorable P. K. Lawrence, district judge.

HEIRS OF POULTNEY
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THE CITY OF LAFAYETTE et als. } No. 37.

On motion of I. T. Preston, esquire, of counsel for defendants, ordered, that the demurrer in this case be set for argument for Thursday next, 9th January inst., and that the counsel of the complainants be notified thereof.

And afterwards, to wit, on Thursday, January 9th, one thousand eight hundred and forty, the following order of court was entered of record, to wit:

THURSDAY, *January 9th*, 1840.

The court met, pursuant to adjournment.

Present, Honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

By consent of parties, this cause was ordered to be continued until to-morrow at 10 o'clock, A. M.

And afterwards, to wit, on the 10th day of January, Friday the 10th, 1840, the following order of court was entered of record, to wit:

FRIDAY, *January 10th*, 1840.

The court met, pursuant to adjournment.

Present, Honorable John McKinley, presiding judge; honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

On account of the illness of the presiding judge, this cause was ordered to be continued until the next term.

And afterwards, to wit, on the 16th day of January, one thousand eight hundred and forty, the following answer was filed by True Gilman Chamberlin, to wit:

CIRCUIT COURT U. S.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. }

To the honorable the judges of the ninth circuit court of the United States for the eastern district of Louisiana, sitting in equity jurisdiction.

The several answer of True Gilman Chamberlin, defendant, to the bill of complaint of Emily Toutant, widow Poultney, and Matilda Poultney, exhibited in this court against this defendant and

many other defendants—the said answer also to serve and be instead of a demurrer and pleas to said bill. This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or to so much or such parts thereof as this defendant is advised is material for him to make answer, answers and says, that this defendant, for special matter of plea and defence, says, *that this defendant, for special matter of plea and defence, says,* that this defendant adopts the several of plea, defence, and answer pleaded, set up, and answered by the president and board of council of the city of Lafayette in their answer. This defendant further answers and adopts the several matters of plea, defence, and answer pleaded, set up, and answered by Robert Layton, a defendant, in his answer to the said bill of complaint; and if this defendant be compelled to make answer and make discovery, and not otherwise, answers and says, that he is in possession of, and claims title to, the portion of the tract of land which is mentioned and described in an act of sale from Thomas Toby, passed before Hilary Breton Cenas, notary public, on the 5th day of May, 1835, and being situate in the rear of the suburb Lafayette, in the parish of Jefferson, and numbered five, six, and seven, on a plan drawn by D. Ponelly, surveyor, in January, 1835, and which is deposited in the office of the aforesaid notary public. The tracts of land each measures sixty feet fronting Jackson street, by a depth of one hundred and fifty feet, between parallel lines, to the dividing line of lot No. 10 in the rear—all American measure. And this defendant, further answering, says, that if the complainants should succeed in their said suit, this defendant shews that he is a bona fide purchaser, with a just title, and without notice of complainants' title; and that he had made great and useful improvements on the property so possessed, in making ditches, fences, curb and gutter pavements, filling up the ground, paying taxes and assessments, and erecting houses, kitchens, stables, and other buildings, to the value of dollars; and if the said property be decreed to complainants, then this defendant prays that he may be decreed to restore to him, before being put into possession of the same, the value of the useful improvements, viz: the sum of dollars aforesaid.

And this defendant further answering says, that this defendant purchased the property held by him and claimed by the complainant, from Thomas Toby, who is a resident of the parish of New Orleans and a citizen of the State of Louisiana; and this defendant prays that the said Thomas Toby may be made a party to this suit, and be served with a copy of the bill of complaint and this answer; and that the United States' writ of subpœna issue, directed, &c., commanding, &c., so that if this defendant be evicted of the property purchased from said Thomas Toby, he may have a decree over against the said Thomas Toby for the value of the said property,

and dollars damages; and if, from the limited nature of the jurisdiction of this court, the said Thomas Toby cannot be called in warranty by this defendant, and this defendant cannot have a decree over against him, still this deponent prays as before, and that said service of said bill, answer, and subpœna be made, as a means of notifying said person of the pendency of this suit, that he may render this deponent any assistance in his power in the defence of this suit, and be bound by the effects of the decree rendered in this case; and if, from legal and technical objections of jurisdiction, or other reasons, this cannot be done, this defendant prays that, for the purpose of doing full and ample justice, and protecting this defendant, the said complainants may be compelled so to amend their bill as to make the said Thomas Toby a party thereto; so that if this defendant be evicted of his said property, this defendant may either have a decree over against the said Thomas Toby, such [as] accords with law and justice, or that the said Thomas Toby may be bound, as regards this defendant, by the effect of this decree; and defendant prays for relief adapted to the nature of the case, and such as in equity and justice he is entitled to.

STATE OF LOUISIANA, *city of New Orleans:*

being duly sworn, doth depose and say, that he has read the above answer, and knows the contents thereof, and that the same is true.

Subscribed and sworn to this 2d day of January, 1840, before me.

And on the same day and year aforesaid, the following demurrer of Frederick Proctor, one of the defendants to the bill of complaint of Emily Toutant, widow Poultney, and Matilda Poultney, was filed:

The Circuit Court of the United States, of the ninth circuit, eastern district of Louisiana.

The demurrer of Frederick Proctor, one of the defendants to the bill of complaint of Emily Toutant, widow Poultney, and Matilda Poultney, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of, to be in manner and form as the same are therein and thereby set forth and alleged, saith: He is advised by his counsel that there is no matter or thing in the said bill contained good and sufficient in law to call this defendant in question in this honorable court for the same; but that there is a good cause of demurrer. Therefore this deponent doth demur thereto, and for cause of demurrer this defendant saith, that the complainants' said bill (in case the allegations therein contained were true, which this defendant doth in no case admit) contains not any manner of equity wherein this court can ground any decree to give the complainant

any relief or assistance as against him, this defendant; whereupon, and for divers other *other* errors and imperfections in the said bill appearing, this defendant doth demur in law thereunto, and humbly demands the judgment of this honorable court, whether he shall be compelled to put in any further or other answer to the said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

And the said defendant, for further and other cause of demurrer to the said complainants' bill, saith, that it appears by the plaintiffs' own showing, in their said bill of complaint, that the instrument marked A, making part of the said bill of complaint, which is erroneously said to contain a mortgage which the said complainants, in their said bill, seek to redeem, contains no such convention or agreement, or contract, and that the matters set forth in said bill are only triable at law; wherefore, as the said bill of complaint doth not contain any matter of equity sufficient to establish any right or demand against this defendant, he doth demur thereunto, and prays the judgment of the court, whether he ought to make answer to the said bill of complaint, and to be hence dismissed with his costs most wrongfully in this behalf sustained.

(Signed) ISAAC T. PRESTON,
For Defendant.

And afterwards, to wit, on the sixth day of April, 1840, the following entry was made upon the chancery rule docket of this court, to wit:

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

MONDAY, *April* 6, 1840.

Set for a hearing on the demurrer of F. Proctor and city of Lafayette and Robert Layton, for Tuesday, the 10th of April, one thousand eight hundred and forty, by George Eustus, esq.

And afterwards, to wit, on the tenth of April, one thousand eight hundred and forty, the following joinder of demurrer was filed:

POULTNEY'S [heirs]
vs.
THE CITY OF LAFAYETTE et als. } No. 37.—Joinder in demurrer of Proctor.

In the court of the United States, ninth circuit, eastern district of the State of Louisiana.

EMILY TOUTANT, WIDOW POULTNEY, and MATILDA POULTNEY, complainants,
vs.
THE CITY OF LAFAYETTE, &c., defend'ts. } In chancery.

And the said complainants come, and by way of joinder to the demurrer of the defendant, Frederick Proctor, herein to the bill of

the complainants, say, that the matters and things in said bill contained are good and sufficient in law to entitle this court to have and maintain jurisdiction herein, and to afford to the complainants the relief sought. Wherefore they pray judgment upon the said demurrer, and that the same be overruled.

(Signed) CHINN, *for Complainants.*

And afterwards, to wit, on the fifteenth day of April, one thousand eight hundred and forty, the following order of court was entered of record, to wit:

WEDNESDAY, *April* 15, 1840.

The court met, pursuant to adjournment. Present, honorable John McKinley, presiding judge; honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS
vs. } No. 37.
THE CITY OF LAFAYETTE et als.

The court having maturely considered this case upon the demurrer of F. Proctor, Robert Layton, and the city of Lafayette, now order, adjudge, and decree, that said demurrer be overruled, and the defendants—F. Proctor, Robert Layton, and the city of Lafayette—answer over.

And afterwards, to wit, on Monday, the 12th of April, 1840, the following order of court was entered of record, to wit:

MONDAY, *April* 12, 1841.

The court met, pursuant to adjournment. Present, the honorable John McKinley, presiding judge; the honorable P. K. Lawrence, district judge.

POULTNEY'S HEIRS
vs. } No. 37.
THE CITY OF LAFAYETTE et als.

On motion of the complainants, by their attorney, a rule is awarded them against all the defendants who have filed cross bills or petitions against their vendors, or who have called others in warranty to show cause, on the 17th day of April, 1841, why said proceedings should not be stricken from the record herein, and dismissed at the costs of such defendants respectively.

And afterwards, to wit, on Saturday, April 17th, 1841, the following order of court was entered of record, to wit:

SATURDAY, *April* 17, 1841.

The court met, pursuant to adjournment. Present, honorable John McKinley, presiding judge; honorable Philip K. Lawrence, district judge.

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

The rule taken in this case, and returnable this day upon the defendants, to show cause why the calls in warranty should not be dismissed at defendants' costs, was continued, by consent, until Monday, the nineteenth instant.

And afterwards, to wit, on Tuesday, the twentieth day of April, one thousand eight hundred and forty-one, the following order of court was entered of record, to wit:

TUESDAY, *April* 20, 1841.

The court met, pursuant to adjournment. Present, honorable John McKinley, presiding judge; honorable Philip K. Lawrence, district judge.

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

The rule taken in this case upon the defendants, to show cause why the calls in warranty should not be dismissed at their costs, came on this day, and was argued by Isaac T. Preston, esq., for the defendants, and R. H. Chinn, esq., for the complainants; and the court being duly advised, do now order, adjudge, and decree, that the said rule be made absolute, and that judgment be entered up against the following named defendants for the respective amounts of costs due on their calls in warranty, to wit:

Nathaniel C. Lane (clerk's costs)	$58 66⅔
Daniel T. Walden	29 33
Margaret Lavand, f. w. c.	29 33
James Ogilvie	58 66
Frederick Jordy	29 33
Gotleb Fulmer	29 33
True G. Chamberlain	29 33
George W. Clarke	29 33
Francis B. Conrad	58 56
James Nicholson	29 33
John Longpre	58 56
Richard Swain	58 66
Mortimer Turner	29 33
John Moncklor	29 33
Joseph Mensman	58 66
James Hefferman	29 33
François Daubert	29 33
Henry Koffman	29 33
William Kessler	29 33

EXHIBIT—Continued.

John Nicholson	$88 00
Frederick Jacobs	29 33
George Bower	58 66
Madame Stanislaus Le Bland	58 66
Madame Isabella Fox	29 33
Madame Joseph Baldwin	29 33
Charles Keifner	29 33
Guy Arnold	29 33
David Adams	117 33
Joseph Gontz	58 66
Shibler Bernard	29 33
Paulin Verret, f. w. c.	29 33
Oliver P. Jackson	29 33
John Richardson	58 66
Madame Pierre Brunean	29 33
Eleanor McKay, for herself and her minor children, Peter and John Daily, heirs of Patrick Daily	58 66
Gaspar Ruck	58 66
Antoine Chauvin	29 33
Madam Frances Hagelberger, widow of Theodore Ruff, and as tutrix of the minor Caroline Ruff	29 33
Albert Depassan	29 33
Anna Rossner, wife of Charles Rossner, and as tutrix of Caroline, Elizabeth, Albert, and Jno. Enders, minor children	58 66
Guillaume Marmiche	29 33
Mary Wolfe, widow of Peter Jacobs	29 33
James Aspil	29 33
Elishir Crocker	58 66
Elliott W. Gregory	29 33
Marie Chistopher, f. w. c.	29 33
Madam J. B. Gautrean	29 33
Philip Harty	29 33
Michael Maher	29 33
Lucille Vivant, f. w. c.	29 33
Mary Adele Harty, widow of Isaac Lambert	29 33
Andrew Thomas, junr.	29 33
James Calloway	29 33
Mathew Rea	29 33
Benjamin C. Elliott	29 33
John Elie Jolly	58 66
Phillipe Enonel Dugue Levaudais	58 66
Joseph Tirrell	29 33
Andres Thomas	29 33
Francis Thomas	29 33

EXHIBIT—Continued.

Mary Duffin Kay, wife of R. Kay	$29 33
Joseph C. Hills	88 00
George Durmeyer	58 66
Adam Genser	29 33
Lewis F. Bundy	29 33
Solomma Schultze	29 33
George S. Johnson	88 00
Adam Gaysser	29 33
Joun A. Sturges, tutrix of Frederica Butler, George M. Butler, and Josh. Butler	29 33
Jacob Kaisser	29 33
Jean Laiser	58 66
George Reinhart	29 33
Peter Hanson	29 33
George Depassan	29 33
O. C. Vanlanningham	29 33
Mrs. Michael P. Jones	29 33
Charles Korner	29 33
Joseph Hyde	29 33
Ann M. Sturges, wife of John H. Sturges, Frederick Jordy, Sophia Orr, Charlotte Brooks, and Henry Jordy, heirs of Frederick Jordy	58 56
Mrs. Barbara Haberscreitinger	29 33
Sarah Kenney, wife of R. L. Kenney, and as tutrix of the minors Ann Coffey and John Coffey, heirs of Barney Coffey	29 33
Celeste Euphemie Labranche, wife of William Brown	29 33
Alexander Phillips	88 00
Telixene Buckman, tutor of the minors William Woodman and George Woodman	29 33
Isaac T. Preston	29 33
Andrew Thomas, senr.	29 33
Richard Salter	58 66
John P. Nesbitt	29 33
Peter L. José	88 00
	$3,636 92

And that judgment be also entered up against the said defendants severally for the marshal's fees for service of said claims on warranty.

And afterwards, to wit, on the third of January, one thousand eight hundred and two, the following entry was made upon the chancery rule docket of this court, to wit:

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als.

In this case, on suggestion of Isaac T. Preston and C. M. Conrad, esquires, that Robert Layton, one of the defendants, has departed this life since the last proceedings in this case, and that Margaret L. Layton, his surviving widow and tutrix of his minor heirs, Margaret Layton, Robert Layton, James Shephard Layton, and Henry Layton; also Catherine L. Preston, wife of Isaac T. Preston, Buxton Layton and Thomas Layton, are his only heirs and representatives, it is ordered that they be made parties defendant in this suit.

And on the same day and year aforesaid, the following entry was made upon the chancery rule docket of this court, to wit:

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als.

On this first Monday of January, 1842, appeared Isaac T. Preston and C. M. Conrad, esquires, for defendants, and filed in evidence with the clerk and master the following exhibits marked A, B, C, D, E, F, G, I, M, N, O, P; and, on further motion of said counsel, this cause is set for trial for hearing on the merits, for Friday, the 14th January, 1842.

And afterwards, to wit, on the ninth day of February, one thousand eight hundred and forty-two, the following entry was made of record, to wit:

WEDNESDAY, *February* 9, 1842.

The court met, pursuant to adjournment. Present, the honorable Theodore H. McCaleb, district judge; the honorable John McKinley, presiding judge, absent.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. No. 37.

On motion of Isaac T. Preston, esquire, this cause was called on the docket, and fixed for trial for Wednesday, the 23d February, 1842.

And afterwards, to wit, on the twenty-third of February, 1842, the following order of court was entered of record, to wit:

WEDNESDAY, *February* 23, 1842.

The court met, pursuant to adjournment. Present, the honorable Theodore H. McCaleb, district judge; the honorable John McKinley, presiding judge, absent.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. No. 37.

On the twenty-third day of February, 1842, this case was called for trial; whereupon the complainants, by their counsel, objected,

upon the ground that the cause was improperly put on the issue docket, and set down for trial; that no replication had been filed, and that, since the last term of the court, some of the defendants had died, and their heirs or representatives had not been made parties to the suit; and moved the court to remand this cause to the rule docket, that an issue might be formed. On the other hand, the defendants insisted that the case should proceed immediately to trial, or be dismissed under the rules of practice presented by the Supreme Court in equity cases. These motions were all fully argued together, and, after argument thereof, the court took time to consider.

And afterwards, to wit, on the twenty-fourth day of February, one thousand eight hundred and forty-two, the following entry and decree were entered of record, to wit:

THURSDAY, *February 24th*, 1842.

The court met, pursuant to adjournment. Present, honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

HEIRS OF POULTNEY
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

On this day the court proceeded to deliver its opinion on the motions argued and submitted yesterday in this cause. When the court had announced it was about to deliver its opinion, the counsel for the complainants moved to be allowed to file the documents A and B, but the court refused to receive them, stating that it was about to deliver an opinion on the cause; upon [which] the counsel for the complainants handed them to the clerk, the court considering that the complainants' application to file a bill of revivor or exceptions came too late.

Decree of the Court.

The defendants having moved to dismiss the bill of complaint in this cause, under the 21st of the rules in equity cases, and it appearing to the court that the complainants had not set for trial the pleas filed in this case, nor filed replication to the answers, although more than two terms of the court had elapsed since the filing of the same, it is ordered and adjudged, and decreed, that the bill of complaint in this case be dismissed as to all the defendants, and the complainants pay the costs of suit.

And afterwards, to wit, on the same day, the following documents, referred to in the decretal order, were lodged in clerk's office by the solicitor of the complainants, to wit:

POULTNEY'S [HEIRS]
vs.
THE CITY OF LAFAYETTE et als. } Bill of Revivor vs. Layton's Heirs.

To the honorable the judges of the court of the United States in and for the ninth circuit and eastern district of Louisiana, in chancery sitting:

Your oratrices, P. Poultney and Matilda Poultney, by way of bill of revivor, represent, that heretofore in this honorable court they filed their certain bill in chancery against the city of Lafayette, Robert Layton, and others, and such proceedings were had as to make the said Robert Layton party to said suit, since which time he has departed this life, leaving Margaret N. Layton, widow, community, Catherine L. Preston, wife of Isaac T. Preston, B. Layton, Thomas Layton, Margaret H. Layton, James Shephard Layton, and William Henry Layton, his heirs, all of whom are citizens of the State of Louisiana. Wherefore, &c., and in as much, &c., your oratrices pray that said suit may stand, and be revived against the said Laytons and Prestons; that they may be compelled to answer on oath this and the original bill herein, and that such decree may be pronounced against them, as is prayed for against their ancestor, and such as the rules of equity will authorize. They pray for the United States writ of subpœna, &c., commanding, &c. They pray for general relief in the premises.

(Signed) CHINN, *for Complainants.*

COURT OF THE UNITED STATES,
Ninth Circuit and Eastern District of Louisiana:

MATILDA POULTNEY, &c.
vs.
THE CITY OF LAFAYETTE, &c. } In chancery.

The complainants except to the answers of the following defendants, herein severally: Guy Arnold, Mrs. Wm. Brown, George Bower, Buller's heir, Mrs. J. D. Baldwin, Madam Pierre Bruman, F. B. Conrad, Geo. W. Clarke, Antone Charwier, George Depasseau, George Durmeyer, B. C. Elliott, Mrs. J. Fox, Adam Gaysor, Gotleb Fulmer, Barbary Hebensendinger, Jos. Hyde, Frederick Jacobs, Mrs. M. P. Jones, George Johnson, O. P. Jackson, P. M. and Jose Jordy's heirs, Frederick Jordy, Jacob Kaiser, Mrs. L. R. Kinney, Charles Keiffner, William Kesler, Henry Kopman, Charles Komer, N. Chane, John Loupre, Margaret Lavand, Madam S. Le Blanc, Jean Lazere, John Mukler, Eleanor McKay for Darley's heirs, Jos. Mensman, James Nicholson, John Nicholson, Nisbit, James Ogilvie, Alexander Phillips, P. F. Peytavin, E. Ruk, George Reinhardt, John Richardson, Richard Salter, Mrs. S. Schultze, R. Swain, Jean Saizer, Andrew Thomas, jr., Francis Thomas, Joseph Tirrel, Andres Thomas, O. C. Vanlandingham,

Madam Varrett, D. T. Walden, Woodman's heirs,* Buckman, upon the following grounds:

1st. The said defendants do not severally admit or deny the claim of John Poultney to the land in controversy, as set forth in the bill.

2d. They do not admit or deny the truth of the said John Poultney, or the heirship of the complainants, as claimed in the bill.

3d. They do not disclose whether they claim under a title ever vested in Madam Rousseau.

4th. They do not disclose with sufficient certainty what property is held by them and embraced in the complainants' bill.

5th. They have not answered as to the rents and profits of the land held or claimed by them; the value thereof, or the value of the estates claimed by the complainants.

6th. The said defendants have in their said answers severally called other persons in warranty, caused them to be made parties herein, when the court can entertain no jurisdiction over the persons or subject matters of controversy, thereby unnecessarily and improperly encumbering the record herein with irrelevant and unnecessary parties and subjects matter of litigation.

7th. The said answers, and each and every of them, are vague, indifferent, and not responsive to the allegations in the complainants' bill. Wherefore, the complainants pray that they may be adjudged to be defective and insufficient.

(Signed) CHINN, *for Complainants.*

COURT OF THE UNITED STATES,
Ninth Circuit and Eastern District of Louisiana:

MATILDA POULTNEY, &c.
vs.
THE CITY OF LAFAYETTE et als. } In chancery.

The complainants except to the answers of the following defendants, herein severally: G. Austin, James Armor, Lewis Adam, David Adams, Babcock, Giles & Co., James W. Breedlove, Francisco Cannellis, F. Dugin, John Hinckle, Justamond & McGinn, Mary D. Kay, H. R. Lee, Mrs. Mayo, James McGarey, John Mitchell, John Moucklar, Isaac T. Preston, Carlisle Pollock, James Purdon, Jos. Marie Pierre, James Ruse, Benja. Simms, Mrs. C. Tiglor, on the following grounds:

1st. The said defendants do not, in their several answers, admit or *say* deny the claim on the part of John Poultney to the land in controversy, as set forth in the bill.

2d. They do not admit or deny the heirship of the complainants, as set forth in the bill, or the death of the said John Poultney.

3d. They do not disclose whether any claim under the title once vested in Madam Rousseau.

4th. They do not disclose what property in controversy is held by them, nor do they describe the same with sufficient certainty.

5th. They have not answered as to the rents of the land held by them respectively; the value of the property, or the value of the estate which is claimed by the complainants.

6th. The answers of the defendants, James Armor, Louis Adams, David Adams, James W. Breedlove, John Hinckle, Justamond and McGinn, Mrs. Mayo and James Pindon, and Mrs. C. Tiglor, are not verified on oath, and are therefore severally insufficient.

7th. The said several answers are wholly evasive, argumentative, and not responsive to the allegations in the complainants' bill.

Wherefore, for the causes aforesaid, the complainants except to the same severally, and pray judgment of the court that their exceptions may be sustained.

(Signed) CHINN, *for Complainants.*

Court of the United States, ninth circuit and eastern district of Louisiana.

MATILDA POULTNEY, &c. vs. THE CITY OF LAFAYETTE, &c. } In chancery.

The complainants except to the answer of the defendants, the City of Lafayette, upon the following grounds:

1st. The said defendants do not answer and say, what property or estate designated and set forth in complainants' bill is held or claimed by said defendants.

2d. Said defendants do not answer and say, what is the reasonable rent and profit of the estate claimed by them, and what is in controversy in this suit.

3d. Said defendants do not answer and say, what is the reasonable value of the said estate in controversy, or what is the reasonable value of that claimed by them.

4th. The said answer is wholly evasive, argumentative, and insufficient; wherefore the said complainants except thereto, and pray that said answer may be set aside, and that said defendants may be required to answer over.

(Signed) CHINN, *for Complainants.*

And afterwards, to wit, on the twelfth day of March, one thousand eight hundred and forty-two, the following petition for rehearing was filed by complainants' solicitor:

In the court of the United States, ninth circuit and eastern district of the State of Louisiana.

THE HEIRS OF POULTNEY vs. THE CITY OF LAFAYETTE, &c. } In chancery.

The complainants, by their counsel, most respectfully petition the court to reconsider the decree pronounced herein, dismissing

their bill against all the defendants, so that the cause may be restored to the docket, and proceeded in according to the rules of chancery practice.

From the high respect entertained for the district judge who presided in this cause, it is believed, that if his various duties *at this time*—the irregular manner in which the question was presented—the confused and desultory manner in which it was treated—had not prevented him from obtaining a thorough knowledge of the history of this cause, that this application would never have become necessary.

It should be known to the court, and the records show the fact, that the defendants have, throughout the whole time of the controversy, sedulously avoided a trial of the cause upon its merits, and that they have thrown in the way of the complainants *or* the obstacles in their power to prevent their speedy preparation for their cause for trial.

The suit was instituted in 1837, when some of the defendants were served with process—none answered within the delay prescribed by the rules of the Supreme Court of the United States. The further *of* time of three months was allowed them to file their answers. Others failed to file any answer, or to ask for time. The court was importuned by the complainants to place the cause upon the chancery docket, so that they might proceed to prepare their cause for trial. It was resisted by the defendants, refused by the judge, and the action of the Supreme Court was invoked by the complainants. The cause was subsequently placed on the rule docket, and the bill was taken then for confessed against very many of the defendants. Still they would not, or did not answer. At a subsequent term of the court, a decree Nisi was entered against them; they remained in default, and the complainants were forced to have a copy of the decree served, before they could further proceed; after all which, they were permitted to come in without the payment of costs, and have the rule taking the bill for confessed, and the decree Nisi, set aside, and to file what was called answers. But this was done upon terms, expressed in the order of the court, that the complainants should be permitted to take exceptions to said answers, without limitation as to time being expressed.

It should be also *be* borne in mind, that whilst all these delays and embarrassments were thrown in the way of the complainants, one entire year was consumed in the contest about the clerkship in this court; the records and papers inaccessible to litigants, and *now* informed when or to whom they could apply with certainty as the clerk of the court, to make the necessary preparation to take the necessary and safe steps to expedite the trial of their cause. Let it be further borne in mind, that when the district judge found that chancery practice must prevail in this court, that he declined further sitting in this cause, as appears from the record; and further, that the circuit judge has not constantly presided in this court, since

his appointment, at every term, but more imperious duties of office *has* required his absence repeatedly. Can it be said that the plaintiffs have been so remiss in the preparation of their cause, as to forfeit their rights? The subjoined affidavit is relied upon as a part hereof, and prayed to be considered.

CHINN, *for Complainants.*

Richard H. Chinn states on oath, that he is the agent, as well as the attorney, for the complainants in the foregoing case. It was his desire to have procured the appearance of as many of the defendants as possible before he completed the issue, so that the testimony taken under our commission might be used against all. When the application was made to the court—Judge McKinley presiding—in June, 1837, to have an issue at law out of the chancery tried, as to the citizenship of the plaintiffs and defendants, he understood distinctly the judge to declare, that as said question was not separately pleaded, *that* it would be only tried upon the final trial of the cause. He further states that he was informed by the judge now presiding in this court, about the commencement of this term, that it would not be his pleasure to take up the chancery docket at this term; and he was surprised, upon his motion to remand the cause to the rnle docket being made, to be met with a suggestion that the cause should be dismissed, because two terms had intervened without his having set down the plea for trial. He did not then, nor does he now, believe that there was any such plea in the cause as required an issue separately upon it, or authorized a separate trial thereof.

The complainants, he believes, *has* material witnesses absent from Louisiana, and who have constantly resided in the State of Pennsylvania since the institution of this suit—Madam Alaborne and others—by whom the complainants can prove, that at the time of instituting this suit the complainants were citizens of the State of Pennsylvania.

(Signed) R. H. CHINN.

Sworn before me, 12th March, 1842.

(Signed) DUNCAN N. HENNEN, *Clk.*

And afterwards, to wit, on the sixteenth day of March, one thousand eight hundred and forty-two, the following order of court was entered of record:

WEDNESDAY, *March* 16, 1842.

The court met, pursuant to adjournment. Present, honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

It is ordered by the court, that the application of the complain-

ants' counsel for a rehearing in this case be set down for hearing the 29th March.

And it is further ordered, that a copy of the petition for a further hearing be served on the counsel of the defendants, and that they be notified of this order.

And afterwards, to wit, on the thirty-first day of March, one thousand eight hundred and forty-two, the following order of court was entered of record:

THURSDAY, *March* 31, 1842.

The court met, pursuant to adjournment. Present, the honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } No. 37.

The court having maturely considered the application for a rehearing made by the complainants in this cause, from the decree of the court dismissing the bill, now order that the said application be overruled, and a rehearing refused; and thereupon the counsel for the complainants moved the court to allow an appeal to the Supreme Court of the United States, returnable to the January term, 1843, on the complainants entering into bond, in the sum of five thousand dollars, conditioned as the law directs, with Richard H. Chinn as security; which order of appeal, as prayed for, is granted by the court.

POULTNEY et als.
vs.
THE CITY OF LAFAYETTE et als. } Bond.

Know all men by these presents, that we, Emily Toutant, Widow Poultney, Matilda Poultney, of the city of Philadelphia, in the State of Pennsylvania, and Richard R. Chinn, of the city of New Orleans, are held and firmly bound unto G. Austin, Oliver Aikin, Robert Avart, James Armor, E. N. Alden, Aspel, Lewis Adams, Armstrong, Arambide, David Adams, Samuel Adams, Guy Arnold, Thomas Barrett, Mrs. Wm. Brown, Mrs. Wm. Baldwin, Dr. Bien, George Bowen, John M. Bach, George Bonner, A. Bertrand, L. F. Bundy, Brabant, Giles Babcock & Co., Tobias Bickle, Buckman, the heirs of Butler, James W. Breedlove, Mrs. J. D. Baldwin, Madam Pierce Bruman, Thomas Connelly, Maurice Conner, Francisco Cannells, John Connelly, F. B. Conrad, Charles Carl, M. Cowell, James Calloway, Richard M. Carter, Madam Christopher Copman, G. W. Clarke, Cammack, John Crocker, Elisha Crocker, Antoine Chauvin, T. B. Chamberlaine, John Cohen, Coffer's heirs, Kenney and wife, G. W. Clarke, Davis, Widow

Drouett, H. L. Debhause, George During, George Depasseau, Albert Depassan, Henry Dufelho, George Durmeyer, P. L. B. Duplessis, F. Dugin, Daily's heirs, B. C. Elliott, James Ervin, Ender's heirs, A. L. Forrest, W. L. Florence, Mrs. J. Fox, Daniel Frederic, O. Fortier & Co., Gottleb Fullmer, Arnold Guy, S. Gloyd, Madam Gatrean, Joseph Gontz, C. J. Gow, John Green, A. S. Gore, Daniel Gerandine, E. M. Gregory, Mr. Gordon, jr., Adam Gaynor, Peter Hanson, C. Hefferman, Barbary Helensendinger, J. C. Hills, Joseph Hyde, Peter Hillinger, Mrs. Hiegelberger, Jos. Hall, P. Hall, P. Harby, John Hinckle, Thomas Hobbs, N. Harrington, John Hall, Marie Jose, George L. Johnson, Frederick Jacobs, Mrs. M. P. Jones, George Johnson, Justament and M. Green, Jolly, O. P. Jackson, Madam Jacobs, Peter L. Jose, Jordy's heirs, Frederick Jordy, George Kline, Robert Kay, Jacob Kaiser, Mrs. L. R. Kuney, George Kilne and wife, Knettle, Charles Keffner, Wm. Kesler, Kenney and wife, Henry Kopman, Charles Kormer, the city of Lafayette of the city of Lafayette, John Laizer, the heirs of Robert Layton, N. C. Lane, Lawrence, Livadias, Henry Lockett, H. R. Lee, Long, Mrs. Latimore, L. Ledome, J. Lambert, Madam Lazine, Margaret Lavand, Madam Leblanc, Stanislaus Leblanc, Maher, Mrs. Mayo, Jas. McGarey, James Mens, Daniel Murphy, Guilliam Marmiche, J. L. McCoy, John Muhler, Mrs. Maurer, John Mitchell, L. Millaudon, McHenry, Eleanor McKay for Dailey's heirs, John Mouchlar, Jos. Minceneaux, Amanda Nott, Js. Nicholson, John Nicholson, Nisbet, I. T. Preston, Alexander Phillips, Porter, Stone & Co., Peytavin, Carlisle Pollock, Pollin, Madam Prenot, Frederick Proctor, Purdon, Levi Pierce, Pilcher, N. W. Prendergast, Marie Jos. Pierre, Richardson, Antoine Robert, A. R. Reverand, John Rosseau, Richardson, M. A. Rupp, E. Reck, George Reinhard, M. Rea, J. Roffinger, John Regan, C. Rossner, John Richardson, Robetaille, James Ruse, Rossner for Ender's heirs, Shields, Wm. Stokes, Richard Salter, S. Schultze, C. Springer, Mrs. Schneider, Wm. Smith, Mrs. Martin Schnider, Shute, S. M. Sickles, J. W. Swain, B. Simmons, R. Swain, Mrs. Smith Sterges for Butler's heirs, Jane Saiser, H. L. Tilghman Turner, Madam Tamislas, Andrew Thomas, jr., François Thomas, Turner and Lee, Joseph Tirrell, Mrs. P. Tiglor, J. Trinchard, Andres Thomas, O. C. Vanlandingham, Mrs. Lewis Vivant, Madam Verrell, J. Walsh, J. C. Wilson, D. T. Waldon, R. Watson, Woodsward's heirs by Buckman, J. W. Zacharie, and to any and all other defendants in a suit hereinafter named, in the penal sum of five thousand dollars; to the payment of which to the foregoing obligees, their executors, &c., jointly and severally bind ourselves, our heirs, &c. firmly by these presents, sealed and dated the first day of April, in the year 1842.

The condition of the foregoing obligation is such, that whereas, at the present term of the ninth circuit court of the United States,

sitting in and for the eastern district of the State of Louisiana, a decree was pronounced in a suit therein pending in chancery, wherein the said Poultneys are complainants, and the said Austin, Avart, Armor & Co., are defendants, dismissing the complainants' bill with costs; from which decree the complainants have prayed for and obtained an appeal to the next term of the Supreme Court of the United States, upon the execution of this bond, with the said R. H. Chinn as their security.

Now, in case the said Poultneys shall well and truly prosecute said appeal with effect, and shall pay to the obligees herein, and to the defendants in the said appeal, jointly and severally, all such costs as may be awarded them by reason of the prosecuting of said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) EMILY POULTNEY,
By R. H. CHINN, *Agent.* [SEAL.]
MATILDA POULTNEY,
By R. H. CHINN, *Agent.* [SEAL.]
R. H. CHINN. [SEAL.]

Witness: D. N. HENNEN.

Upon filing the bill herein, separate process was issued against each of the defendants, which is not transcribed herein by order of the complainants' solicitor. The answers of other defendants, named herein as having been filed, are not transcribed by order of the complainants' solicitor, they being similar to the answers of I. T. Preston, John Mitchell, and T. G. Chamberlain, the same printed form being used in all. There is on file various acts of sale accompanying the defendants' answers, which are omitted to be copied by order of plaintiffs' solicitor. The exhibits from A. to P. inclusive, filed on the rules, and exhibit (2,) filed in the office, are voluminous transcripts of records in other cases, and are not herein transcribed by order of complainants' solicitor. Proceedings have been had as between defendants and others called by them in warranty, and between the clerk of this court and the complainants, relative to costs, which are also omitted to be transcribed by order of plaintiffs' attorney. The deposition of Perrault, as to the insufficiency of the first security for costs, filed December 21st, 1839; the deposition of Mr. Man, taken by defendants, relative to citizenship of complainants, filed 9th of December, 1839; the disclaimer of the title on the part of J. Ruffignae, D. Girardin, and W. Smith, filed 19th November, 1838; the agreement of counsel as to the admissibility of certain documents upon the final trial of the cause, filed 9th December, 1839; the petition of Mathew Rea for time to answer, filed 21st November, 1837; the affidavit on rule, requiring further security for costs, filed December 21st, 1839, are not transcribed by order of the solicitor of the complainants.